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ABSTRACT

This report contains information relevant to policies for child day care regulation in California. An introductory section of the report briefly provides background information on the development and goals of the California Day Care Licensing Task Force, summarizes policy recommendations, and defines the terms used in the report. Separate committee policy reports are presented on the following topics: (1) philosophy underlying the licensing effort and feasibility of alternatives to licensing; (2) administrative organization and integration of regulatory programs; (3) standards; (4) supervision, consultation, and personnel administration; and (5) enforcement. A discussion of task force policy recommendations is offered. The appendices, comprising more than one-half of the report, include: (1) a short history of day care licensing in California; (2) the full text of several issue papers prepared by task force consultants which deal with day care and child development program licensing, standards, and administration; and (3) a selected bibliography of additional reference materials. (ED)

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CALIFORNIA

CHILD DAY CARE LICENSING

TASK FORCE

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REPORT AND

RECOMMENDATIONS

PS 008306

MAY 31, 1975

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STATE OF CALIFORNIA – HEALTH AND WELFARE AGENCY
OFFICE OF EDUCATIONAL LIAISON
915 Capitol Mall
Sacramento, California 95814

Edmund G. Brown Jr., Governor

May 31, 1975

To the Friends of Children:

In his inaugural address of last January, Governor Brown expressed his intention of expanding the child care opportunities for the citizens of California. He has subsequently instructed the Office of Educational Liaison to begin drafting a plan of action that will attempt to meet the needs of the hundreds of thousands of parents and children that are looking forward to an enlightened, progressive and humanistic child care system in this State.

Additionally, Mario Obledo, Secretary of the Health and Welfare Agency, has enthusiastically supported the Governor's proposal and instructed the leadership of his Agency to make every effort to guarantee the success of the Administration's goal of expanded and enlightened child care.

In order for the high goals envisioned by this report to be met, both cooperation and dedication must be ever present in our efforts. The Office of Educational Liaison looks forward to working cooperatively with the State Department of Education, with all public and private child care providers, and with the many groups and individuals who have already demonstrated their interest in the well-being of children.

Finally, I would personally like to thank the members of the California Child Day Care Licensing Task Force who have devoted many hours of their time in the preparation of this report. I would also like to thank Dr. Hollis Moore, the previous Director of this Office, who began this project. And I most warmly thank the members of my staff and the consultants who labored most professionally and tenderly on this report.

Our reward shall be found in the smiles and happy faces of all the beautiful children of our State who may sing a song, tell a story, ride a tricycle together in peace and in love because of our slight effort.

Together,

Ray Gonzales

Dr. Ray Gonzales, Director
Office of Educational Liaison

CALIFORNIA

CHILD DAY CARE LICENSING

TASK FORCE

REPORT AND RECOMMENDATIONS

MAY 31, 1975

03004

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INTRODUCTION

GOALS OF THE CALIFORNIA CHILD DAY CARE LICENSING TASK FORCE

The initial goals of the California Child Day Care Licensing Task Force were to identify major problem areas in the broad field of child day care regulation and to develop specific statements of what "should be" in each area rather than extensively analyzing "what is". From the beginning, it was clear that major problems were present in both theoretical, philosophical areas and in practical, applied situations. Thus, a third major goal was to insure congruity between expressed philosophy and recommended practice.

Throughout all the Task Force and Issue Committee deliberations, a basic, underlying goal was the need for universality--both in the global sense of considering all types of child day care programs and all possible means of regulation, and in the perhaps more specific sense of providing equal protection to all children in all day care settings. That is, to provide enough flexibility to allow for changing situations and needs and for healthy variation between programs while making specific regulations plain enough and strong enough to insure uniform interpretation, application, and enforcement on a statewide basis. It is this emphasis on universality which the Task Force hopes will render its report and recommendations valuable to persons other than those immediately involved with child day care services in California.

Finally, the Task Force sought to produce a document capable of positively affecting the lives of children and their families who need and/or utilize child day care services in California. The staff of this Office and the membership of the Task Force are painfully aware that scholarly reports, high-minded philosophy, and thoughtful recommendations per se rarely impact on the lives of children. To do so, they must be conceived, produced, and presented in a manner calculated to initiate action on the part of persons with sufficient political power and/or legal authority to significantly benefit children. It is our firm objective that this report will prove to be exactly that kind of catalytic document. Without indulging in an exhaustive study, the Task Force has examined the realities of child day care services, regulatory standards, procedures, and statewide administration as they presently exist in California. The recommendations which follow are almost exclusively action-oriented and, whenever possible, point towards constructive changes in current policy or procedures.

SUMMARY POLICY RECOMMENDATIONS

1. Schedule and conduct a series of meetings, using the "Report of the Task Force on Child Day Care Licensing" as the basis for discussion, within six months after publication and dissemination of this report.

2. Adopt principles basic to child day care services as cited in this report.

3. View the regulation of child day care as a protective service, uniformly applied, in which all parties have rights, universal in coverage and varied in approach.

4. The State licensing agency provide leadership for local planning agencies in the area of child day care zoning policies.

5. Develop at the State level specific appropriate codes for building inspection, sanitation and health for child day care facilities.

6. Provide for strong continuing public participation in child day care regulation at the State and local level including but not limited to public hearings and advisory committees.

7. Refine and expand a range of regulatory mechanisms to complement licensing in the protection of children in child day care services.

8. Establish a Family Day Care Task Force to recommend alternatives to licensing and to plan demonstration projects.

9. The State conduct a special study of problems on all aspects of In-Home Care regulation.

10. Provide for alternative methods of compliance and clearly express all child day care regulations.

11. Explore alternatives to rigid staff/child ratios.

12. Encourage the flexible certification of administrative and program staff as one complementary method of regulating child day care.

13. The State develop and implement a pre-licensing orientation program.

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14. Emphasize license revocation rather than license renewal in enforcement.

15. The regulatory agencies make available technical assistance and supportive services.

16. Staff licensing agencies at a level which allows them to carry out their responsibilities.

17. Replace the present one-step licensing process with two steps. The first step would evaluate the facility and staff. The second step, occurring within six months, would evaluate program content.

18. Develop an effective complaint process.

19. Realistically undertake the suppression of illegal operations.

20. The State provide full financial support and fiscal accountability in regulating child day care services.

21. Prohibit the establishment of fees for licensure of child day care services.

22. Provide for more effective enforcement of child neglect and abuse statutes within child day care services.

DEFINITIONS

The following terms shall be defined as indicated below for purposes of this report unless exception is specifically noted elsewhere. The Task Force recommends that the State consider the adoption of these definitions for use in its regulatory processes.

1. Child Day Care, for the purpose of regulation, means care, protection, supervision and positive stimulation of growth and development necessary to the welfare of a child or children, unaccompanied by parent, guardian or custodian, provided on a regular basis, for periods of less than 24 hours per day.
2. License means an authorization to provide child day care service in accordance with the provisions of the license, the applicable legislative act(s), and the rules and regulations of the appropriate department(s).
3. Accreditation means confirmation of meeting specific criteria.
4. Regulations are those rules formulated by an authorized agency governing individuals, groups or institutions who fall within the purview of a specific statute.
5. Standards are specific statements of measurable performance factors.
6. Objectives are optimum goals which reflect an objective criterion of excellence.

7. Family is a group of persons of varying ages who define themselves as a family unit, share the same living space, and provide each other with a major portion of the essential elements of physical, emotional and financial support over a period of time.

8. Caregivers are all individuals who have the frequent and temporary charge or guardianship of a child or children in the absence of the child's parents.

9. Consultation is the provision of professional or expert advice or information.

10.1 Supervision of children, for the purpose of regulation, means the assumption of responsibility for the safety and well-being of children.

10.2 Supervision of regulated facilities is defined as evaluation and surveillance.

11. Protection means to safeguard children from exposure to conditions or situations which would adversely affect their health, safety, growth and development.

12. Positive stimulation includes, but is not limited to, activities, situations, environments, practices, relationships and materials which enable and encourage children to use their senses and develop their abilities.

13. Health, for the purpose of this document, includes provision for physical, mental and emotional care

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and protection of children from harmful factors in accordance with accepted professional standards.

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BACKGROUND:

DEVELOPMENT AND PROCEEDINGS OF THE TASK FORCE

The early 1970s was a period of significant growth in child day care funded by the federal government. Regulations in the various states appeared to be a major obstacle to expanding the supply of child day care resources. The California Child Day Care Licensing Task Force is a direct result of that federal activity. In 1973, the United States Department of Health, Education and Welfare issued a report titled "Guides for Day Care Licensing". The report was the result of a two-year study, by the Office of Child Development and the Office of Economic Opportunity, to develop model day care licensing regulatory material for use by states as they reviewed their licensing requirements. "Child day care" was selected as the most accurate description of the activity for which we are concerned. It is used relatively interchangeably with child development programs, child care programs, and day care. The definition developed by the Task Force for child day care is "care, protection, supervision, and positive stimulation of growth and development necessary to the welfare of a child or children, unaccompanied by parent, guardian or custodian, provided on a regular basis, for periods of less than 24 hours per day". Child day care services can be broadly grouped in three types: 1) group day care, often shortened to "center",

2) family day care, a small number of children cared for in someone else's home, and 3) in-home day care, sometimes subsumed under the term "sitter" care. (The important element in this last category is that the child caring is performed by a person who is unrelated and often heretofore unacquainted with both the parents and children.)

California was one of nine states that received a HEW grant to promote a review of current state licensing practices. The Governor assigned responsibility for the study to the Office of Educational Liaison in the Health and Welfare Agency. The grant was received by the state of California in March of 1974. The Task Force met for the first time on August 28, 1974. The Task Force members listed in this report were invited to participate by the Office of Educational Liaison. They represent a broad cross-section of types of programs, geographic areas, interested organizations, and ethnic groups.

At the time that the Task Force was being formed, California was close to completing a revision of the current standards in the state. That revision was required by the Community Care Facilities Act of 1973, which combined 29 types of care programs under one licensing authority in the Department of Health. Because that standards review was under way, California was able to approach the area of child day care regulation in a common sense and yet unique manner.

The Task Force focused on major policy issues confronting child day care licensing in California. Major emphasis was placed on the re-examination and refinement of facility licensure since licensure carries the legal police-power of the state to set, implement and enforce minimum standards, and so must form the basis for all other types of regulatory administration (e.g. professionalism - credentialing; economic incentives - fiscal regulatory control; and community prestige - membership in standard setting organizations.) While emphasizing licensure, the Task Force clearly recognized both the need to consider alternatives to traditional facility licensure and the need to cluster and coordinate various regulatory approaches for complementary rather than competitive usage. The specific issues addressed by the Task Force were selected from both procedural and programmatic aspects of child day care. This report is intended to serve as a policy document to guide the revision of state statutes and the improvement of regulatory administrative procedures.

The operational plan of the California Child Day Care Licensing Task Force was based upon the collaborative efforts of the Task Force members, a highly qualified group of consultants and the staff of the Office of Educational Liaison. Each of the Task Force members had direct experience with some aspects of licensing. The group identified the issues to be addressed by the Task Force. This was done at the first two-day meeting of the Task Force. At that

meeting there was also group consensus upon the manner in which the issues should be grouped. As a result, five Issue Committees comprised of the Task Force members were established. A consultant was assigned to work with each of the Issue Committees. The Issue Committees were (1) PHILOSOPHY, DEFINITIONS, AND ALTERNATIVE REGULATORY MECHANISMS; (2) ADMINISTRATIVE ORGANIZATION AND INTEGRATION OF REGULATORY PROGRAMS; (3) PROGRAM STANDARDS; (4) SUPERVISION/CONSULTATION AND PERSONNEL ADMINISTRATION; and (5) ENFORCEMENT.

The members of the Issue Committees discussed and made policy recommendations for their respective area. The consultants developed memoranda for the Issue Committees at this first meeting to assist them in focusing upon their area. Consultants provided a common framework of information on issues for the Task Force and the Issue Committees. Consultants were present at all of the Task Force meetings and some of the Issue Committee meetings. The plan called for individual meetings of the Issue Committees and periodic sharing of progress and perspectives by the total Task Force. At the final meeting, the full Task Force discussed, modified, and approved the policy recommendations which had been drafted by the staff based upon the work of the individual Issue Committees.

The report is intended to serve as a planning document for further work in the area of policies in California for child day care regulation. Time constraints and budgetary limitations

did not allow for all issues to be fully resolved. This report is, in a sense, the first step of an educational program intended to broaden the understanding of all interested parties in the regulation of child day care. It is anticipated that the report will be widely distributed and that administrators, operators and parents will have the opportunity to use this report as a starting point for a much broader educational process of persons concerned with child day care. To be successful, a licensing/regulatory program must be understood and supported by the general population.

There are three major divisions of the report.

I. Introduction

II. Policy Reports

III. Appendices

The Introduction is intended to present the report, provide a summary of the major policy recommendations made by the Task Force, establish the context of child day care within which the recommendations were developed and define specific terms as used in this report. The work of the Task Force is contained within the second section, Policy Reports. Each Issue Committee's report is presented exactly as received from the committee's editor. It is hoped that the obvious differences in style will help to highlight the distinct nature and separate recommendations of the individual committees without detracting from the readability of the total report. The second portion of the Policy Report section is titled, "Discussion of Task Force Policy Recommendations".

Here major recommendations from all Issue Committees for future action are presented and discussed. The final part of the report is the Appendices. Here are provided a short history of day care licensing in California, the full text of several issue papers prepared by Task Force consultants, and a selected bibliography of additional reference materials used by the Task Force and certain other background documents helpful to those wishing to pursue the issues discussed in this report more thoroughly.

Lastly, this report contains a very limited number of parenthetical statements attributed to the editor. In all cases, this appellation refers to Margaret Thorpe as general editor rather than to the member-editor of a specific Issue Committee.

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POLICY REPORTS

ISSUE COMMITTEE #1

Philosophy, Definitions and Alternative Regulatory Mechanisms

I. Charge

A. To consider the philosophical reasoning behind licensure of child day care programs and to develop an acceptable philosophical framework for the investigations and recommendations of the full Task Force.

B. To review current child day care terminology and provide comprehensive, clear definitions of selected terms for use by the Task Force and for inclusion in this report. (Note: Since these definitions were adopted by the full Task Force, they appear as a separate section at the beginning of the report. Ed.)

C. To explore different types of licensing programs and other alternative regulatory mechanisms for possible application to California.

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II. Philosophy

A. Principles

1. As a general statement of philosophy, the State should adopt the following principles stipulating the rights of children and parents and the State's role in protecting those rights:

   a. Parents have the right to determine their need for and to arrange for child day care services.

   b. Child day care services are supplemental to family and parental care and do not supplant family responsibility.

   c. Every child has the right to protection from conditions harmful to his/her development, and the right to supervision wherever he/she may be.

   d. Liability for the protection of children rests with those persons who provide care.

   e. Ensuring these rights of parents and children for child day care services is the responsibility of the State through regulation. Such responsibility is not abrogated by the shared administration between State agencies, the delegation of authority to other agencies, or by the implementation of specific programs.

   f. Regulation of child day care services is just one aspect of the protection of parents' and childrens'

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rights. Other statutes and programs must address themselves to other needs.

g. The State has the responsibility to assure maximum input of parents, the full spectrum of providers, and other community representatives in the processes associated with the development and implementation of child day care policies and regulatory procedures.

2. The following principles should direct State action:

a. The State's responsibility for regulating child day care services includes but is not limited to developing minimum facility and personnel standards, promoting program improvement, enforcing established regulations, and providing financial support to fully accomplish these tasks.

b. A fee is not charged for licensure of child day care programs by the State or any of its subdivisions.

c. It is the State's responsibility to insure the availability of consultative services necessary for child day care programs to achieve and maintain regulatory standards.

3. Specific program standards should be established according to the following principles:

a. Each regulation promulgated shall be demonstrably

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related to the care, supervision and protection of children from conditions harmful to their development.

b. Regulations shall be so established as to allow for varying means of assuring the equally effective compliance of differing programs which satisfy the intent of such regulations.

c. Standard setting and revision is a continuous process for which the State retains responsibility. There must be maximum public input in standard setting.

4. The principles below should guide the procedures of the regulatory process:

a. All child day care services in the State are subject to regulation.

b. The nature of specific child day care service arrangements determines under which regulations the service is covered and not the name, description, or auspices under which such services are offered.

c. Standards shall be consistently applied for all child day care services of a similar nature. The State must insure equal treatment and uniform practice in carrying out regulatory functions.

d. In the issuance of licenses, the State shall not discriminate on the basis of race, religion, ethnic group, native language, gender, marital

status, or life style (including, but not limited to, sexual preference and diet). None of these, in and of themselves, should be a criteria for denial of license.

e. All parties to the regulatory process have free access to all genuinely needed information relative to the process. Such access should assure a balance between the public's right to know and the individual's right to privacy.

B. Recommendations

1. In order to further the principles listed above and to establish a basis for the development of child day care regulations, the State should:

a. Sponsor a series of meetings throughout the state to discuss the philosophical issues associated with the child day care licensing, and specifically to test the validity of the principles herein stated in terms of community support.

b. Establish a system for the ongoing training of regulatory personnel and provide for expert consultation to personnel.

c. Review the entire regulatory process to guarantee an appropriate balance between confidentiality and free access to needed information.

d. Review the child neglect and abuse statutes to

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evaluate the potential of increasing their use in providing for protection of children in all child day care services.

e. Review the present policies for purchase of care. The current practice in purchase of care undercuts the overall purpose of regulation which is to ensure a minimum level of adequate care. This is evidenced in the amount allowed in work-experience grants in AFDC and other grant programs, in the parental fee rate structure in some programs, and the current funding formula for child-cost-per-hour in some programs.

f. Recognizing the still widespread belief that only children and families in difficulty need child day care services; and also recognizing that our society is diverse and multicultural and there are changes affecting children and families, it is recommended that a governmental unit, with responsibility for children, examine current codes, regulations and practices in order to determine how well contemporary needs are met. Such examination should result in actions leading to improving the quality of the lives of all children and families.

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III. Alternative Regulatory Mechanisms

A. Discussion

We believe that trends in society which are creating the need for child day care services will continue and that the current licensing process may be inhibiting the development of child day care services.

Because of the complexity of the issues involved in providing child day care services, we recognize the need for alternative regulatory mechanisms. A brief discussion of possible alternatives follows with financial implications for each.

B. Possible Alternatives to Licensing

1. Continue and improve present licensing of child day care services.

Licensing of group facilities appears to be more satisfactory than for Family Day Care Homes. More staff and increased development of support is needed. Concern about the low percentage of licensed Family Day Care Homes suggests that there are negative aspects to the licensing process. Therefore, these licensing processes could be examined and improved upon. To carry out this alternative would require a heavy commitment of financial support.

2. A form of registration in accordance with national prototypes*.

*See The Public Regulation of Family Day Care - An Innovative Proposal, by Norris E. Class; included in appendix and cited in bibliography.

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This regulatory mechanism may have particular applicability to care provided in private homes. It may not carry the negative aspects of licensing and therefore might tend to include more of the total number of children and providers of care.

However, we have a concern that this approach may provide less assurance of protection for children. If utilized, it must, at a minimum, be accompanied by support systems and use of child neglect and abuse laws.

An unknown part of the cost could be met by shifting present funding.

3. Credentialling of personnel without other regulatory procedures.

In the present system, only the supervisor of the program is required to have knowledge and demonstrate competence in all aspects of the program. Credentialling of the supervisor, coupled with continuing enforcement of fire, health and safety factors through local licensing processes, can be assumed to guarantee desired protection for children.

An improved system for credentialling of all personnel can be presumed to provide at least equal protection of children. Such a system must assure through a credentialling system which could include competency equivalents, that a person providing care was committed to and

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had knowledge and skills to ensure the safety and well-being of children.

This approach could have application to all types of child day care services.

An unknown part of the cost could be met by shifting present funding.

4. No regulation.

The state has the ability to identify and regulate almost 100% of the group care being provided in centers. However, the State is presently regulating a low percentage of care being provided in private homes suggesting that regulation may not be the most viable method for protecting children in such arrangements. In order to protect children under this option, attention should be given to the use of protective statutes and to the development of support systems. In addition, attention should be given to increasing parent and community awareness of and demand for quality. This demand for quality would serve to reduce poor quality situations. It appears as if costs would be no greater than under the present system.

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C. Recommendations

1. That the State establish a Task Force on Regulation of Family Day Care. This Task Force should thoroughly examine the above cited, and other, methods, and recommend the adoption of one or more.

2. The State should, upon recommendation of the Family Day Care Task Force, set up experimental projects comparing alternative methods of Family Day Care regulation with the purpose of determining which method(s) is/are most effective in achieving the objectives of ensuring the well-being and safety of children. Such an experiment should include at least two political subdivisions.

IV. Discussion

Given more time, it would have been logical for this Issue Committee to complete its work prior to the Task Force considering the other areas. Common definitions and a clear philosophical position are essential to the establishment of a coherent public policy. Time constraints required all Issue Committees to proceed simultaneously. Therefore, periodic reports of this committee's work were made to the Task Force members through written memorandums and oral presentations at Task Force meetings.

With the exception of the definition of "standards"*, there was unanimity in both definitions and philosophy.

The committee was able to address the complex issue of in-home care only briefly and is recommending further study.

* This committee defined standards as specific statements of measurable performance factors. Issue Committee #3 defined standards as goals. Both definitions are used in the licensing field. (Ed.)

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ISSUE COMMITTEE #2

Administrative Organization and Integration of Regulatory Programs

The committee attempted to examine the current administrative organization of various regulatory programs affecting child day care services in order:

- to make recommendations concerning the improvement or reorganization of such administrations, and
- to examine the current status of coordination among various regulatory programs affecting child day care services, and
- to make recommendations concerning the integration of such programs.

Four of the seven committee members supported the recommendation that there is a need for a new agency to administer services for children, or children and families, including regulation of child care services.

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RECOMMENDATIONS

1. That common definitions for "child care centers", "group homes", and "family child day care" be established by the State as part of its child day care licensing program. That these definitions be used consistently at all levels of government in all regulatory agencies affecting these programs.

2. That with regard to zoning ordinances:
   a. All zoning codes include specific references to child day care services.
   b. The Government Code, Title VII (Planning), be amended to require a mandatory social planning element--this element to include consideration for child care.
   c. The location and distribution of child care centers and group homes is the responsibility of local planning agencies. Development of legislation to improve zoning and community planning has been an important effort of the League of California Cities.
   d. Family child day care be treated as a customary home use and should be permitted wherever residential housing is permitted.
   e. Child day care centers and group homes be treated as schools, whether proprietary or non-profit,

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and should be permitted or conditionally permitted wherever schools are permitted.

f. Zoning laws permit or conditionally permit child care in business and industrial zones to encourage employment-related child day care programs.

g. Ongoing research on the effects of different zoning codes on the growth of child day care services be sponsored by the State agencies which license such programs.

h. The existence of an appeal mechanism for reviewing decisions of local building inspectors be publicized.

3. That there be in the State Fire Marshal's office a position of Child Day Care Inspector. This person should be responsible for liaison with the State agencies responsible for licensing child day care programs. His/her duties might include, but should not be limited to:

a. Coordinating safety regulations within child day care licensing.

b. Conducting ongoing research on the effect of building codes on existing facilities.

c. Assisting in the development of improved codes.

4. That the State Fire Marshal work toward the development of specific building codes appropriate for group homes

and child day care centers. Such codes should be adopted at the State level and should be enforced locally.

5. That the current practice of requiring no additional safety requirements for family day care, other than those applied to residential occupancy, be maintained.

6. That a study be made of the effect of building codes on construction of child care centers and homes, including modular construction, use of plastic pipe, and other innovative, cost-saving construction materials and techniques.

7. That with regard to health and sanitation:
   a. The State Department of Health develop specific sanitation codes for child day care facilities, since restaurant sanitation codes are not appropriate for child day care facilities.
   b. There be an appeal process at the State level for health and safety compliance.

8. That with regard to State licensure of child day care services:
   a. Private child day care centers which are publicly funded be subject to State licensure; however, programs operated by the State not be subject to licensure but be required to meet equivalent standards.

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b. Some form of regulation, registration or licensing be continued for family child day care in California.

c. Incentives be developed with help from the State Department of Health to encourage regulation (or registration) of family child day care homes.

d. The responsibility for licensure of all child day care services be assumed by well trained and qualified State personnel, decentralized to local offices.

9. Concerning the characteristics of the specific State agency charged with licensing child day care services, this committee recommends the following:

* That there be full discussion at the State level to explore the possibility of creating a new agency to regulate child day care programs. (The pros and cons of this issue as seen by this committee are included in this report.)

* This was not a unanimous recommendation.

(Note: The following recommendations and discussion were developed by this committee at its meeting November 7-8, 1974. Ed.)

FOUR POSSIBLE OPTIONS FOR STATE ADMINISTRATION OF CHILD CARE

I. Single New Agency
II. Single Existing Agency
III. Two Agencies (New and/or Existing)
IV. A Coordinating Agency Plus Other Agencies

Report of the Education Commission of the States of State Offices of Children:

Advantages	Disadvantages
A new agency is more visible and sometimes attracts more support from the Legislature or the public.	Some states have an agency with no budget or no support from the governor -- "clout".
When there is no agency or public official serving as a strong advocate for children, the office may serve in that role. It may become the focal point for information.	There may be resistance from agencies and professional groups.
	Functions may overlap those of other agencies.
	There may be difficulties in staffing and establishing the agency -- i.e., maintaining staff.
	The concept is so new, it has not yet been demonstrated as being effective.
	Some of the state offices lack the attitude and awareness of systems and procedures to make it work.

Observations

California is unique and should seek unique solutions.
There is more political action in the U.S. on behalf of children at this time.
The Office of Educational Liaison was established as a coordinating agency.
Political "clout" is needed to make any (new or old) agency work.
History and traditions have determined the degree of success of new agencies in other states.
There are never any guarantees that a new proposal would work.
Miscellaneous pros and cons listed could apply to any of the options above.

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MISCELLANEOUS POSSIBLE PROS AND CONS OF NEW AND/OR EXISTING AGENCIES*

Pro	Con
A new or modified existing agency might facilitate coordination among agencies.	Resistance to change can be expected from agencies and professions when changes are proposed.
Upgrading of family child care is needed. A change could facilitate improvement.	Duplication of services and functions of agencies might result from some proposed changes.
Each agency has its own constituency.	Each agency has its own constituency.
A new agency could serve as an advocacy and public relations agency/ a modified-existing agency could take a stronger stand in those directions.	The State Department of Education and State Department of Health have a new interagency agreement. Another change before that is tried might tend to sabotage the effort.
In some states, a new agency with a new name has made it possible to obtain new money from the legislature.	In some states, a new agency was established, but not funded -- or was funded only for the first year.
A new agency could serve as a budget review agency (as the office of the Legislative Analyst now serves.)	A new agency sometimes lacks "clout" as well as budget.
A new agency might attract more attention from the public and the Legislature.	An ongoing agency provides continuity.
	California already has an agency with a new program design -- resulting from AB99.
Each agency has its own expertise and can cooperate with other agencies.	Each agency has its own expertise and can cooperate with other agencies.

* We attempted to list Pros and Cons for four ideas: A SINGLE NEW AGENCY; A SINGLE EXISTING AGENCY; TWO AGENCIES (NEW AND/OR EXISTING; AND A COORDINATING AGENCY PLUS OTHER AGENCIES.

It soon became apparent that any Pro or Con could be revised to fit under all of the other three as either a Pro or a Con! Since we did not have time for all that writing, we submitted the above as Pros and Cons to be considered when the Task Force considers the Committee's recommended four options.

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DISCUSSION OF PROS AND CONS

- The agency must have the capability of doing its own research--particularly when child day care regulation is concerned.

- The agency needs strong legal support including adequate numbers of staff with appropriate legal backgrounds and sufficient time available to meet the agency's need for counsel.

- Advisory Committees of lay and professional people are needed which include day care operators and staff, academic experts in day care, parents, and representatives of other regulatory agencies and the public at large. These Committees would assist the agency in setting standards for various child day care programs and would review licensing procedures.

- The agency should encourage local input into standard setting and review and should at all times be receptive to public expressions of opinion concerning standards, because enforcement is possible only when public support for standards exists.

- With specific reference to zoning ordinances, the committee felt that child day care services must be part of the local community planning process. Planners should include this service in the social planning for any community. The location and distribution of child day care centers and group homes is the responsibility of local planning officials.

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- In addition to locations near residences, child day care services may also be needed near places of employment. Such programs might enable employed parents to spend at least some time with their children during the work day, as well as travel time.

PRO

It is common in public administration to create a new bureaucratic arrangement when freedom for innovation is desired.

A new agency might facilitate coordination among other agencies.

An agency could be the focal point for the child care constituency. Citizens could look to it and hold it accountable for improving California's child care services.

A new agency might receive new money more easily from the state legislature; it would have a new image, the interest of the public, and it might be highly visible and attractive.

CON

It is generally better to use an existing agency if it has the capability to accomplish a task rather than go through the disruption and morale-lowering of reorganization.

A new agency, and a small one, will not have the ongoing budget strength of a strong and well-established existing agency.

Overlapping responsibilities with existing agencies may cause strong agency resistance to the new agency.

ISSUE COMMITTEE #3

Standards

I. Charge

A. To examine contemporary needs for standards in child day care programs and to recommend guidelines capable of meeting those needs.

B. To suggest ways of applying standards which insure compliance and protection for children while allowing for beneficial variation among programs.

C. To recommend appropriate qualifications of caregivers.

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II. Findings

A. In California, compliance with State and local ordinances and licensing codes is the foremost if not only method used in the licensing process to ensure program quality. Licensing was originally developed to protect children from harm. But over the years local-bureau interpretation of building codes, statutes, and regulations have been self serving.

1. Thus, compliance by prospective caregivers with so-called "safety" rules has become overly difficult. As a result, fewer children are served.

2. Compliance with rules governing physical surroundings does not insure a quality program. Program quality control should be concerned with the personal care, education and training given children in child care programs.

B. There is no official process which adequately involves users and providers in the review and revision of standards.

C. Employment qualifications of caregiving staff, for all types of care, need to be revised.

Pre-employment training and continuing education of caregivers is needed.

D. The majority of Family Day Care Homes are not licensed because the requirements are too stringent.

E. Standards for infant care, toddler care, night care, and respite care are still in the rudimentary stages.

F. Ill children are generally prohibited from participation in all types of child day care programs.

G. No standards exist for the transportation of children in care programs. This problem is particularly acute for the so-called "day camps" found in Los Angeles and other metropolitan areas.

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III. Recommendations

A. A new approach to the regulation of nonprofit child care is needed.

B. The full participation of users and nonprofit providers of child day care services in the development of new facilities licensing codes and quality control standards is needed. Ongoing review of both mechanisms must be conducted by citizen groups in cooperation with licensing officials.

C. There should be a distinction between the words "standard" and "regulation". As used by this Committee, "regulations" shall imply rules to be followed, whereas "standards" shall connote goals. Quality control and facilities licensing are also two separate issues.

D. Child day care regulations should provide a basic framework from which diverse settings, programs and philosophies can develop. They should be applicable to all programs which provide day care for children in the absence of their parents: public or private, city or rural, rich or poor, large or small, military or civilian.

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E. Regulations must be clearly understandable and easily adaptable to diverse settings and innovative approaches. Regulations should be few in number. They should be simple, direct, and address the issues. They should also be limited to addressing the common human needs.

F. Trial periods for variations and comparable alternatives for compliance should be permitted subject to cancellation if there appears to be substantial risk to the children.

G. The rationale behind each regulation should be an integral part of the whole. The public is entitled to examine the reasoning behind specific rules.

H. Regulations should respect the preservation and protection of family preferences and life styles and should strengthen family identity for both children and adults.

I. A model facilities' licensing code should be developed for statewide use. Minimum safety standards and adequate health standards should be the basis of the code.

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J. Assessment of the personal characteristics of the adults caring for children and licensing of the physical plant and operation should be the preferred method of authorization for care-giving. In order to do this, methods for such assessments must be developed.

K. With regard to the application of regulations, this committee makes the following recommendations:

1. The State should provide pre-licensing or pre-certifying consultants to assist providers in meeting regulations.
2. Staff-child ratios need not be codified. Flexibility in staff-child ratios should be encouraged and permitted. (Pre-certifying consultants should be available to investigate the feasibility of staff-child ratios requested by the prospective caregiver, ensuring that the ratios are sufficient to meet the requirements of the children in the program--giving full consideration to the developing capacities of the children, to the type of program offered and the age grouping in attendance or prospective attendance. It determining the staff-child ratio, consideration should be given to the particular activity or activities being conducted, the total on-site

child population, the high intensity or peak activity periods, and the physical setting.)

3. Staffing patterns should evolve as needs evolve. Since recommended or general staffing patterns relate badly to specific situations, each setting should strive to obtain what they need. The use of split shifts for caregivers as well as part-time and "occasional-auxiliary" caregivers should be given full consideration. Staff flexibility should also be used to promote better staff utilization and creative use of staff based on individual talent and the requirements of the child grouping at a given time.
4. Flexibility and variety in the grouping of children should be favorably viewed and encouraged. All settings should attempt to integrate age variations in their staff. Part-time students and older adults provide excellent stimulation for children. Interaction between age groups, different cultures and dissimilar "life-style" philosophies are essential.
5. Regulations should encourage caregivers to give children the opportunity to assume consequential

responsibility for themselves--from each according to his ability; to each according to his need.

6. Every child care setting should be mandated to involve children in the mainstream of society so that social isolation will be prevented.
7. Regulations should stress the avoidance of sex-role stereotyped equipment and play.

L. The following ten common human needs should be the basis for all child day care regulations:
   1. Food: Nutritional food should be served at each snack and meal. Breakfasts, as well as lunch and dinner, should be provided to children who need them. Allowances should be made for individual variations in appetite.
   2. Shelter: All settings should adhere to reasonable safety and basic regulations for sanitation, heat, ventilation, exits, lighting, floor space, fire, and physical equipment appropriate to the numbers and ages of the children.
   3. Physician Activity, Sleep and Rest: Convenient areas for various types of physical activities and for rest, relaxation, and sleep should be required of all child care facilities according

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to the age, grouping, needs of the children to be served, and local conditions.

4. Clothing: Extra sets of clothing including outerwear should be provided for children in all child day care programs. Clothing should be safe and comfortable and not hamper the child's physical activity or mental attitude.

5. Health: Mildly ill children should not be prohibited from attending their regular program. Parents and caregivers share a responsibility for safeguarding a child's health and maintaining communications on the child's special needs. Children should receive periodic on-site health evaluations and treatment by health care personnel. Emergency health care procedures must be known by all caregivers. Comprehensive health care must be an integral component of child care. Homemaker services for illness and/or emergencies should be available to parents and caregivers. Maternal responsibility paid leaves and similar other alternatives must be provided for adults involved in the day care system.

6. Protection: All children should be entitled to receive supervision designed to protect them without undermining their inherent rights to develop independence. Children should be protected from bizarre methodologies which resemble discipline.

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7. Respect: Caregivers should give respectful consideration to a parent's right to individuality. The caregiver-parent relationship is a MUTUAL one.

8. Discipline: Rational, consistent discipline should be a part of all programs. Corporal punishment, verbal and psychological abuse, intentional deprivation or punishment associated with personal bathroom, sleep, food or dress habits must not be permitted. Children have a right to be informed of behavioral limits and to receive appropriate approval and disapproval.

9. Privacy: Children should be accorded full rights to privacy--both physical and mental--by all caregivers.

10. Caregivers: Caregivers who work <u>alone</u> should be at least 18 years of age and possess elementary reading and writing skills.

M. New tests and methods of evaluation should be developed to determine the qualifications of caregivers. Absolute reliance on educational certificates should be avoided as such criteria, used alone, are insufficient to measure personal qualifications for child handling.

N. Each caregiver, regardless of the duties he/she is to perform, should be personally interviewed by the major or supervising caregiver.

O. All caregivers, regardless of the duties they are to perform, should be required to demonstrate through suitable methods certain attitudinal and physical characteristics. These should include, but not be limited to, the following:

1. Physical stamina and absence of debilitating chronic disease.
2. Freedom from serious communicable disease.
3. Freedom from any physical impairment or condition that would interfere with their ability to perform specific tasks.
4. Observable emotional characteristics suitable to caring for children such as: (a) Patience; (b) Genuine liking of children; (c) Ability to respond to children's problems and interests; (d) Positive concepts of self-worth; and (e) Ability to relate to parents.

P. Caregivers should demonstrate fiscal responsibility related to their specific tasks within a program or to the type and magnitude of the program.

Q. Caregivers should possess administrative abilities and staffing knowledge as may be required by their particular setting or specific responsibilities.

R. Further development of caregivers should be specifically encouraged. Financial assistance should be provided by the state

for (1) additional formal education in such areas as child development, general programming and the administrative aspects of child care; (2) seminars and workshops developed by providers, consultants, and/or other similar community resources, and (3) participation by providers in state and national meetings that address themselves to the needs of children.

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IV. Discussion

One of the basic confusions that permeates the field of licensing is the nature and purpose of standards. It is unfortunate that the term "standard" has two related but not compatible definitions. The first of these connotates a basic position. The other relates to the highest goal or objective. In California, licensing continues to use standards as the foremost if not only method to ensure program quality. Over the years, the expectations of programs by the public and licensing authority have risen until the purpose of standards has shifted from the basic to the higher definition. Thus, licensing has come not to represent the basic position necessary for the safeguarding of children, but to reflect the higher quality expected by today's society. Therein lies much of the confusion about the purpose and practice of licensing. Two efforts are necessary to clarify the confusion. First,standards must go back to representing the basic position. Second, alternative methods to raise and maintain high quality programs must be developed.

The major recommendation of this Issue Committee was that "current regulations should be discarded". Whether one uses the regulations developed as a result of the Community Care Facilities Act or the old Title 22 regulations, a

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new approach is needed. This report provides only the guidelines for that new approach.

Since this Issue Committee sees standards (regulations) as reflecting the basic framework for program operation, it feels that regulations should be simplified. Alternative methods to achieve compliance with any rule should be encouraged. Variations upon rigid staff ratios should be allowed. These steps would require new additional techniques to ensure high quality programs. Two such techniques are a varying rate schedule for reimbursement and increased post licensing consultation.

The Committee sought added focus upon the caregiver (teacher). Experience and "competency evaluation" should be acceptable as substitutes for degrees. Ongoing training should be encouraged and funded by the State. Instead of licensing for the caregiver, credentialing should be explored as a certification method.

Much work remains in this area. General guides must be refined before new regulations are written. It is essential to establish the framework of regulations before specific rules are developed. New administrative structures must be developed as standards are revised. Techniques to augment the licensing standards must be developed simultaneously if program quality is to be maintained. In

addition, methods must be devised to allow for local variations where circumstances and program objectives require it.

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ISSUE COMMITTEE #4

Supervision, Consultation, and Personnel Administration

1. Recommendations

A. With regard to supervision, this committee makes the following recommendations:

1. The initial licensing process, subsequent supervision or monitoring, and licensure renewal should be parts of a single, ongoing process assuring regular contacts between the day care provider and the licensing agency. To ensure continued effective communication between provider and licensor, these functions should be performed by the same licensing worker(s) in order to build up a long-term working relationship.

2. The State should work with local licensing representatives in developing an extensive pre-licensing orientation program for potential child day care providers. This program should include both provision of written materials and local group orientation meetings with licensing workers available to provide consultation as needed. The program should help potential providers gain a thorough understanding of State and local regulations, necessary steps towards gaining licensure,

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common initial problems in operating a child care facility, and resources available to new operators. The program might also be valuable in early identification and/or weeding out of potential applicants who would have extreme difficulty in achieving and maintaining conformity with regulations.

3. The initial licensing review process should be geared to insuring a good quality program with a developmental emphasis. While a checklist might be utilized, it should not be administered by a technician who simply observes and evaluates, but by someone with expertise in the field of child development who will interact with the applicant or licensee by offering assistance, discussing problems, and providing needed feedback.

4. The license should be renewed annually, and there should be a definite, scheduled renewal visit.

   The renewal process would differ from the initial application process in that it would not involve as much detail as the initial application.

   It should provide for a review of those aspects

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of the program which might have changed over the year.

5. The licensing agency should schedule at least one monitoring visit with providers during each year. These visits should be scheduled at approximately six-month intervals and should be announced to the operators. Reviews should focus on program considerations rather than on licensing requirements and should provide operators with helpful feedback and suggestions for program improvement. Operators should be encouraged to assist the licensing agency in selecting program aspects for review and in developing appropriate review instruments and/or procedures.

6. As part of the monitoring process, the licensing agency should respond quickly to complaints about specific facilities. Visits in response to complaints should be announced to operators except in cases of possible threat to children or reason to suspect cover-up activity.

B. With regard to consultation, this committee makes the following recommendations:

1. Individual day care providers should be assigned an individual licensing worker whom they could

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contact for information about licensing, general advice, and technical assistance. That licensing worker should be knowledgeable in all aspects of child development programs and would be expected to provide many services directly including consultative services in areas such as nutrition, health, safety, education, parent involvement, business management, etc. In addition, specialists in the above-mentioned areas should be available at the licensing agency.

2. The licensing agency should be responsive to consistent requests for certain kinds of assistance and should work with local agencies to organize workshops on these topics for concerned providers.

3. When resource banks do not exist, the licensing agency should help create them within local communities and should provide referral services. Information should include course listings from local schools and colleges, available materials from other public and private agencies, names of operators willing to assist other operators in specific areas, locations of book and toy lending libraries, recent child care publications and other similar resources.

C. With regard to personnel administration, the committee makes the following recommendations:

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1. The licensing agency must have adequate numbers and adequately trained staff to fulfill its broad responsibilities.

2. Since lack of staff will probably continue to be a serious problem until there is wide public support for a really effective licensing program, the licensing agency should take the lead in generating such support by publicizing a brief outline of the specific benefits which would be realized through a more effective licensing program.

3. The licensing agency should emphasize recruitment of individuals generally trained in child development who could fill broad roles within the agency. A B.A. should generally be the minimum educational requirement, but an A.A. would be acceptable if the applicant had completed some child development courses and had at least two years of child care work experience.

4. Experience in child care programs should be the single most important factor in selecting applicants to be licensing workers since people with such experience would likely be most sensitive to the needs of children and to the ingredients of good quality child care.

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5. New licensing workers should be provided with on-the-job training under the sponsorship of the State licensing agency to ensure statewide uniformity in interpretation of the regulations and in consistency of procedures.

6. A period of apprenticeship with an established licensing worker should be an integral part of the training process as well as individualized training based on the background and needs of new workers to fulfill specific jobs.

7. Training and staff development should be attitudinal as well as technical - stressing the need for a helpful, flexible approach to the licensing process.

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ISSUE COMMITTEE #5

ENFORCEMENT

I. Goals

Child day care programs in the State of California are regulated in two ways: licensing by the State Department of Health and accreditation by the State Department of Education. In developing our recommendations we have taken this into consideration and when reference is made to licensing in this Task Force report, it also includes accreditation.

A. To develop a working definition of the term "enforcement" as it pertains to the regulation of all child day care programs and facilities.

B. To identify both the positive and negative aspects of enforcement and the particular activities and techniques which may be subsumed under each type of enforcement.

C. To determine the conditions necessary for implementation of a sound program of regutory enforcement.

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II. Findings

A. To be effective, enforcement depends upon public support and a financial and administrative commitment from the Governor, the Legislature, and appropriate governmental agencies to achieve the goal of protecting the rights of families and children and the recognition that the human qualities of care are as critical, if not more so, than the physical qualities.

B. More than any other phase of licensing, enforcement is dependent upon public acceptance and support. The emergence of day care as a social phenomenon involving millions of children has greatly increased public support of regulation of child care facilities.

III. Recommendations

A. Enforcement is one part of the child day care licensing process. Enforcement should assure that programs achieve and maintain compliance with regulations intended to safeguard wholesome child development. Both positive and negative approaches must be included.

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B. Enforcement administration should be viewed as inter-dependent with the licensing agency's functions of supervision and consultation.

C. The following supervisory functions should be regarded as positive enforcement of state law and the licensing agency's regulations:

1. Dissemination of information to inform parents and the general public and promote wholesome child development practices, including widespread recognition of the need for and the value of child care facility licensure;
2. Consultation and technical assistance regarding the regulations with prospective licensees;
3. Clear communication of the requirements for licensure and of the regulations for ongoing programs;
4. Written disclosure of all deficiencies and provision of a reasonable period of time for compliance with regulations;
5. Well-planned and implemented programs of supervision and consultative service:
   a. Frequent evaluation visits to new licensees to achieve required compliance.

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b. At least annual evaluation visits to all licensed facilities to assure full compliance.

c. Announced and unannounced supervisory visits as needed at the discretion of the administrative agency.

d. Acknowledging and respecting the right of licensees to be informed of the purpose of any supervisory visit.

D. Negative enforcement as defined by the Issue Committee is the termination of illegal operations whether licensed or unlicensed. Techniques include:

1. Denial of initial appl ations;
2. Well-formulated complaint procedures;
3. Appropriate training of licensing personnel in enforcement techniques;
4. Investigations;
5. Confrontation techniques;
6. Administrative review, hearings, and court actions;
7. Injunction, prosecution, and license revocation.

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E. Negative enforcement should not be undertaken without adequate legal counsel, staff training for participation in hearings, and the department having a well-formulated "plan of enforcement" strategy including tactics for dealing with the public relations and publicity aspects.

F. Sound regulatory enforcement requires the following:

1. A constitutionally valid statute containing adequate legislative guidelines for operations generally and for enforcement specifically, including regulatory provisions to prosecute illegal operations by unlicensed persons and to enjoin illegal activities by licensed or unlicensed operators;
2. Clearly stated and practicable regulations which can be applied uniformly and with equal treatment;
3. Sufficient manpower not only in respect to field staff (suggested ratio 1-50) but also legal, specialized consultants, and personnel for suppression of illegal operation.

G. With regard to enforcement administration and coordination with other regulatory programs, this committee makes the following recommendations:

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1. The regulatory agency must refine administrative operations and provide training and staff development to insure reliability of investigative findings and uniform practices.
2. The licensing process should be statutorily split to permit a facility and personnel evaluation as the first step followed by six months provisional licensure culminating in a thorough evaluation of the program as the second step.
3. Enforcement should depend on license revocation rather than licensure renewal.
4. There must be administrative coordination and integration of day care licensing with other supportive regulatory programs (such as fire safety and health) both at the state and local levels of government. There must be effective administrative coordination of state and local departments where some licensing activities or responsibilities are delegated or decentralized. The formal and actual relationship of the licensing authority and law enforcement agencies, especially the prosecutor's office, needs much consideration. A beginning device to achieve sound enforcement might be some type of state interdepartmental regulatory council.

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DISCUSSION OF TASK FORCE POLICY RECOMMENDATIONS

1. Schedule and conduct a series of meetings, using the "Report of the Task Force on Child Day Care Licensing" as the basis for discussion, within six months after publication and dissemination of this report.

This report sets forth the views and recommendations of the Task Force members. These views must be discussed with the broader population of parents, operators, and administrators of child day care programs. Time constraints did not allow the Task Force to validate its positions through sharing with and gaining the views of others.

Public meetings would enhance the State's efforts to spell out the benefits of licensing and other regulatory mechanisms. Regulatory programs are more effective with wide public support. Standards must reflect the user's views. To protect children in all situations, parents must clearly understand and support the State's role in regulation.

To establish a firm basis of public opinion and support for the development of child day care regulations, the State should sponsor a series of public meetings throughout the state to discuss philosophical issues associated with child day care regulation. Weekend meetings, spaced throughout the State,

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are needed to provide working parents the opportunity to participate. The staff of the Office of Educational Liaison should organize the meetings, using the members of this Task Force as an advisory committee and as presentors at the meetings.

In addition to making this Report widely available, the State should develop a brochure based on this report to be distributed as part of an educational campaign for future users and operators of child day care programs.

2. Adopt principles basic to child day care services as cited in this report.

As a general statement of philosophy, the State should adopt the principles as developed and presented in the report of Issue Committee #1. These principles stipulate the rights of parents and children and the State's role in protecting those rights. They should be used to direct State action, govern the establishment of specific program standards, and guide the procedures of the regulatory process.

3. View the regulation of child day care as a protective service, uniformly applied, in which all parties have rights, universal in coverage and varied in approach.

Regulation of child day care requires a clear

operational definition which includes but is not limited to the following elements:

a. Child day care means care, protection, supervision and positive stimulation of growth and development necessary to the welfare of a child or children, unaccompanied by parent, guardian or custodian, provided on a regular basis, for periods of less than 24 hours per day.

b. Child day care services are supplemental to family and parental care and do not supplant family responsibility.

c. The purpose of regulation is ensuring that every child receiving child day care is protected from harmful conditions.

d. Regulation is preventive in nature.

e. Multiple approaches to regulation are needed to ensure protection.

4. <u>The State licensing agency provide leadership for local planning agencies in the area of child day care zoning policies</u>.

Traditionally land use has been under the jurisdiction of local communities. The trend to share this responsibility with regional and State agencies requires a cooperative relationship between the State and local planning officials. An educational campaign, jointly organized by the State licensing agency,

League of Cities and other organizations, should be the first step. A conference bringing State and local officials together should be held this year.

Zoning regulations should contribute positively to the development of needed child day care facilities. Definitions and allowable uses vary widely from city to city and county to county. Guidelines developed by the State should be used to provide direction for local officials.

For zoning purposes, Family Day Care Homes should be treated as private residences. Special attention should be given to the development of guidelines for group day care homes.

In addition, restrictions prohibiting the location of child day care programs in industrial areas should be removed. Intermediate size programs (6-12 children) are severely curtailed since zoning regulations for group centers are customarily applied.

5. Develop at the State level specific appropriate codes for building inspection, sanitation and health for child day care facilities.

This procedure is presently being followed in the area of fire/safety. It eliminates the application of inappropriate codes to child day care centers (e.g., using the restaurant health and sanitation code). The procedure would also standardize definitions and

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applicability of laws to programs. For example, the Field Act standards are applied to private centers by the City of San Francisco, even though the Education Code exempts Children's Centers from these requirements.

6. Provide for strong continuing public participation in child day care regulation at the State and local level including but not limited to public hearings and advisory committees.

The widespread negative reactions to the recent Community Care Facilities Act regulations indicate the importance of developing regulations which are consistent with community expectations. Effective mechanisms, including but not limited to advisory committees, are essential to successful community education programs. They provide a vehicle for the setting of standards consistent with community attitudes and also serve as avenues for communication between the local community and the State licensing agency.

7. Refine and expand a range of regulatory mechanisms to complement licensing in the protection of children in child day care services.

While licensing is likely to remain as the principal regulatory mechanism for private group centers,

it is only one approach. Particularly in the area of Family Day Care Homes and In-Home care, licensing has proven inadequate for the purposes of regulation.

The role of protective services in local welfare departments needs to be clarified in relation to regulating child day care services. With coordination of protective services and regulation, program supervision could be more effective.

Parents must be provided with information if they are to share the responsibility with the State for ensuring that programs meet standards. Vigorous community education programs are essential in order for regulation to serve as a positive preventive program.

8. Establish a Family Day Care Task Force to recommend alternatives to licensing and to plan demonstration projects.

The report of the Legislative Analyst on Publicly Subsidized Child Care Services in California estimates that nationally, over ninety percent of the Family Day Care Homes are not licensed. These estimates point out the need to explore new approaches to the regulation of this type of service. The alternatives suggested by Issue Committee #1 are the major options. Variations and elaboration of these models can be found in "Alternatives for Regulation of Family Day Care Homes for Children" by Gwen Morgan*

*Citation included in bibliography

and "The Public Regulation of Family Day Care: An Innovative Proposal" by Norris Class*.

As suggested earlier in this report, the responsibility for child day care regulation should be shared between the State and the parent. The nature of Family Day Care Homes is more personal and lends itself to more direct parent influence than other types of child day care services. Furthermore, the number of Family Day Care Homes mandates that parents work with the State in ensuring the adequacy of these programs.

9. The State conduct a special study of problems on all aspects of In-Home Care regulation.

The State is required by federal law to regulate In-Home Care where federal funds are used. While the State presently has regulations covering In-Home Care, virtually no efforts by local or State officials are being made to enforce them. In California, there is no existing mechanism which is appropriate for regulating this type of care. Even the registration of all caregivers would require some additional local structures. Clearly, the State must investigate these problems and develop appropriate solutions if it is to fulfill its responsibility of protecting children in day care settings.

10. Provide for alternative methods of compliance and clearly express all child day care regulations.

* Citation included in bibliography

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Simplified application of regulations will encourage the expansion of child day care programs. Clear expression will reduce problems of interpretation and may simplify compliance and enforcement procedures. Alternative methods of compliance should be clearly specified in the regulations.

More flexibility in the application of standards is needed. The principle of equal treatment under the law precludes giving individuals the power to make "subjective" evaluations of a program's compliance with the standards. But varying local conditions do call for a flexible approach. By allowing for multiple methods of compliance with any specific or combination of standards, programs could meet the regulatory requirements. An appeal procedure at the State level is needed.

11. Explore alternatives to rigid staff/child ratios.

There are many variables, in addition to staff/child ratios, which indicate program quality. There is a need to examine program factors to determine whether there are alternatives to the present method of setting staff/child ratios. Care must be exercised to ensure that program quality does not suffer. The establishment of staff/child ratios for reasons other than the benefit of children should be closely examined.

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12. Encourage the flexible certification of administrative and program staff as one complementary method of regulating child day care.

Certification would require the development of appropriate "tests of competency". Efforts should be made to place less reliance upon course requirements alone as a measure of staff effectiveness. Under all circumstances staff promotions should not be limited to completion of "courses". Family day care regulation might also be enhanced through this alternative form of regulation.

13. The State develop and implement a pre-licensing orientation program.

A well conceived orientation program, including pre-licensing consultation, would assist in the development of additional child day care programs. Many potential providers are confused by the complexity of the licensing process. The State should assist prospective operators in dealing with all agencies which are involved in approving new programs.

14. Emphasize license revocation rather than license renewal in enforcement.

Regular (at least twice a year) supervision would be much more effective in ensuring program quality control. Problem programs could be visited more

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frequently, providing a more timely schedule for the identification and resolution of program deficiencies. Where programs fail to resolve serious program deficiencies, this approach would provide a better basis on which to take the legal step of license revocation.

15. The regulatory agencies make available technical assistance and supportive services.

The regulatory agency should build upon the initial contact made at the time of licensing, by continuing to provide consultation and technical assistance to day care providers. This would require a staff trained in a wide range of program content areas. In addition, specialists in child development, health, administration, etc., should be made available. A resource bank and referral service could be supported or, when necessary, run directly by the licensing agency. Workshops designed to meet specific skill deficiencies by the operators could be developed.

16. Staff licensing agencies at a level which allows them to carry out their responsibilities.

While a B.A. is viewed as the minimum educational qualification for licensing workers, an A.A. with two years child development experience could be substituted. A background in child development is the most important subject area competency.

A well formulated training program should be

conducted for State licensing personnel. New employees should serve an apprenticeship period with an experienced licensing worker.

17. Replace the present one-step licensing process with two steps. The first step would evaluate the facility and staff. The second step, occurring within six months, would evaluate program content.

It is not possible to judge the quality of a program's content based upon a paper application and an interview. An evaluation of the program content can only be made through a process of evaluation while the program is in operation. The two-step evaluation would allow decisions to be made initially covering basic areas of care, safety, and site adequacy. The second step would cover the content of the program.

18. Develop an effective complaint process.

New procedures should be developed so that parents can take an active part in the evaluation process of programs. The procedure should be easily available. Care must be taken to protect the operator from spurious complaints and consideration should be given to techniques which will ensure confidentiality.

19. Realistically undertake the suppression of illegal operations.

Programs should not be allowed to operate without

obtaining a license or meeting the required regulatory criteria. The suppression of illegal operations requires the clarification of role definitions, legal counsel to support staff, formulation of strategy and tactics, preparation for public relations aspects and coordination among governmental agencies.

20. The State provide full financial support and fiscal accountability in regulating child day care services.

The regulation of child day care services is a major undertaking requiring considerable financial support. The State must fully accept its responsibility to provide such support whether in the form of additional personnel, increased personnel training, public education, technical assistance to providers or other components of the regulatory program. Additionally, it is the State's responsibility to conduct ongoing assessment of such components' merits, their relative contributions towards ensuring uniform conformity and high program quality, the feasibility of proposed alternatives or new regulatory components, and to otherwise ensure fiscal accountability.

21. Prohibit the establishment of fees for licensure of child day care services.

The regulation of child day care services is a protective service undertaken by the State to ensure the

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safety and well-being of all children receiving care in child day care programs. It is the responsibility of the State to extend such protection to as many children as possible through the regulation of programs. The State requires all operators to apply for licensure and/or to submit to other appropriate forms of regulation. The charging of fees for licensure of child day care services would directly limit the number of such services licensed. Fees would discourage many operators from applying and the cost could conceivably be prohibitive for small operators such as family day care homes.

22. Provide for more effective enforcement of child neglect and abuse statutes within child day care services.

Current child neglect and abuse statutes were established to safeguard children in all settings--including child day care programs. However, enforcement of these statutes is rearely undertaken as a means of improving or suppressing poor quality day care programs. Whenever applicable, greater usage of existing child neglect and abuse statutes should be undertaken to protect children receiving child day care service and to improve or suppress poor quality programs.

APPENDICES

LICENSING OF CHILD DAY CARE PROGRAMS IN CALIFORNIA

A Short History

Regulation of child day care facilities in California had its beginnings at least as early as 1855 when the State recognized public responsibility for dependent children by giving subsidies to private orphan asylums. At that time a large number of children were reared in institutions which led to public scrutiny of funding accountability and methods of State supervision. Orphanages receiving State subsidies were subject to the State Board of Asylum Commissioners, which in 1880 was replaced by the State Board of Examiners, the State Board of Health, and the Superintendent of Public Instruction. Thus early in the regulation of out-of-home programs for children, both the Superintendent of Public Instruction and programs which later came to be known as welfare services were interconnected. This is a theme* which is repeated for the rest of this brief history, and which will undoubtedly continue into the future.

Child day care licensing in California is considered to date from 1911, when a statute was enacted regulating children's

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*A related theme which is not developed in this brief history is the narrowing and specialization of licensing jurisdiction with development of differential standards.

Paper prepared by Marian P. Anderson for the California Child Day Care Licensing Task Force, January, 1975.

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home-finding societies. Licensing responsibility was placed in the State Board of Charities and Corrections. Since that time, licensing has been continuously located in the State agency responsible for public welfare and major social service programs, although that Agency has changed or evolved over the years. In 1913, the scope of the statute was extended to include facilities such as day nurseries, but it was not until 1927 that the regulations specifically included child day care programs. Regulations generally have been for programs serving children under the age of 16 years. The majority of the programs discussed in this report are for children from birth until school age, and for before- and after-school and vacation care of children through elementary school age.

In 1935, the Legislature created the State Department of Public Welfare which replaced the State Board of Charities, and made this new State Department responsible for the administration of child care licensing.

California's leadership among the states, some of which are only now considering a generic licensing law, comes in part from sound features of the 1935 act and the subsequent adoption of the Welfare and Institutions code in 1936. Implicit in California's generic law covering various types of child care services is the belief that some common hazards to children are present in all types of care given to children in the absence of their parents.

The content of standards has undergone considerable change, with an earlier emphasis on physical aspects of care

supplemented by later concern with such qualities of child care as staff qualifications and provision for the emotional needs of children. The relative importance of these factors continues to be debated by both the public and professionals.

In recent decades, child day care has been increasingly viewed as a supplement to, rather than a substitute for, parental care. A number of recommendations made in this report reflect this point of view.

Cooperation between State and local agencies was enhanced by a 1945 statute which permitted the enforcement of local sanitation, health and hygiene requirements in licensed facilities, provided that local standards were not in conflict with State requirements. In 1946, a subvention provision for reimbursement was made, formalizing ongoing agreements between the State and counties, for licensing of family day care homes.

Development of Programs

While the emphasis of this history is on licensing, development of programs must also be discussed in order to delineate licensing jurisdiction. Programs under the general category of child day care services grew up as proprietory private schools; non-profit philanthropic charity and social welfare programs; day care services related to national needs; laboratory and research centers in connection with colleges and universities (many funded by the Rockefeller Foundation); and laboratories for parent education and/or instruction for home economics students in public and private secondary schools.

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Profit and nonprofit private facilities have been continuously under licensing. Programs in which parents have a high degree of involvement (cooperatives) developed both as a special category under licensing and under school districts. Child Care Centers developed in the public schools under the Lanham Act for the supervision and care of children two to sixteen in response to World War II worker needs. These programs then served, and their successors continue to serve, a population also served by licensed private nonprofit programs. When funding ceased following World War II, California was the only state to continue Lanham Act child day care programs. University and college laboratories developed separately both from licensed and public school programs. Later, Head Start and Migrant child care programs developed both through local school districts and within licensed private nonprofit programs. The administrative principle gradually developed that programs operated by State agencies other than the State Department of Social Welfare need not be licensed, but should have standards equivalent to private licensed programs. Thus a dual system has developed in California in which a variety of programs developed in local school districts not subject to licensure while other, often parallel programs, developed under community agencies and were under licensing jurisdiction. Acceptance of a single-basic minimum set of standards for all facilities and all child day care programs public and private has been addressed legislatively and by professional groups only in the

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last decade and such basic minimum standards have not yet been fully implemented.

Funding

The history of licensing must also be related to the history of funding. Funds have most often been made available for programs in terms of the national interest. Programs for the fulfillment of children's needs are only now being recognized. Federal funding has significantly influenced both the development of programs and licensing activities in California. During the depression years, as part of the recreation portion of the Work Projects Administration (WPA), nursery schools with extensive parent involvement were established in school districts and community agencies. Some of these programs were carried forward after federal funding ceased in local school districts under secondary home economics classes, in adult education. Others continued in community cooperative nursery schools which were under licensing jurisdiction. During World War II, Lanham Act funds were used in Child Care Centers (now Children's Centers). Since the mid-sixties there have been continuous and complicated changes both in funding and in program development of out-of-home programs for preschool aged children in child day care. These changes have had and continue to have important implications for licensing.

At the national level, the 1962 Social Security Amendments designated day care as a public social service for which states

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could receive funding. Day care was further emphasized by the 1967 Social Security amendments which provided increased funding. Both amendments made funds available for improving licensing and the 1967 amendments also included the concept of eligibility for past, present, and potential welfare recipients for day care services.

In 1964 with the passage of the Economic Opportunity Act, a program for young children and their parents through the U. S. Office of Economic Opportunity was established as part of its war on poverty. This program later came to be called Head Start. In 1965 the federal Elementary and Secondary Education Act was passed which provided for programs for preschool aged children as a part of compensatory education. The State of California already had a pilot project in compensatory education (the McAteer Act of 1963) and in 1964, as an extension to the State act and to implement the federal act, a statute was adopted to provide for an education component in children's centers. Subsequent legislative changes made it possible for the first time for programs for preschool aged children to be established by public schools through the Unruh Preschool Act (AB 1331/65). A 1944 opinion of the Attorney General had stated that there was no legal authority for the maintenance of programs for preschool aged children as a part of the public school system. Compensatory education funds also became available to profit and nonprofit private agencies and to county welfare departments. In 1965, two

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major changes were made in the State Child Care Center statutes. The services of child care centers were changed to include instruction and the name of the program was changed from Child Care Centers to Children's Centers. Since the California Children's Centers were serving large numbers of families eligible under the 1967 Social Security Amendment requirements, the Legislature has sought federal funds for serving those children in statutes enacted since 1970.

The Department of Social Welfare (currently the Department of Health) and the Department of Education have shared many responsibilities in program funding and maintenance of standards since 1965 through inter-agency agreements. One of the agreements was that the State Department of Education would require programs operated by local school districts to meet basic licensing standards although licenses would not be issued. The Child Development Act of 1972 (AB 99), shifted all child day care licensing for publicly funded programs to the State Department of Education assuming that SDSW's licensing standards were met through accreditation. This statute was never fully implemented. The State Department of Education maintains they were not given the staff positions and funds to carry out this statute. Under the Reorganization Act of 1970, licensing activities by the State Department of Social Welfare were transferred to the Department of Health which continued to license at the same level. The passage of the Community Care Facilities Act (AB 2262) in 1973 reestablished the State Department of Health as having

general licensing jurisdiction, thus reinstituting the dual licensing system.

Funding, or lack of it, has influenced licensing in another way. Although California's licensing statute is inclusive, failure of the Legislature to fully fund licensing activities has meant that certain types of facilities have received more attention than others. For example, although residential and day summer vacation camps for children clearly fall within the licensing jurisdiction of the Department of Social Welfare, there have not been adequate funds to extend jurisdiction to this group of facilities. More recently, in the late 60's and early 70's, changes in governmental philosophy and structural changes in State departments as well as changing funding priorities have led to a de-emphasis on licensing as a legitimate function of the State. The passage of the Community Care Facilities Act in 1973 indicates renewed emphasis on the importance of licensing for the general welfare of the citizenry.

With this complex historical development of programs, influenced heavily by the availability and withdrawal of federal funds, it is no wonder that the question of jurisdiction of the State Department of Health and of the State Department of Education has been and is a troublesome question. Efforts have been made to resolve it by designating some programs as being primarily care or custodial in nature, and others as being primarily educational in nature.

Attempts to resolve this issue were made as early as 1927,

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when private nursery schools were for a time excluded from licensing because they offered a program defined as educational on the basis of an Attorney General's opinion which construed the licensing law to exclude educational institutions. However, in 1944, the Attorney General stated that an institution may be both a school and also an institution subject to the jurisdiction of licensing by the State Department of Social Welfare.

The inherent duality of our language in concept and thought, made the separation of education from care seem a rational and logical distinction. However, the most cursory observation by either a professional or lay person, showed that the label of a program for children did not indicate its content. Present thinking is that the early years are so crucial in a child's development and that intelligence is so closely intertwined with physical development and care, that no fine distinction need or should be made. Eventually, legislation should be sought to establish a single licensing and program operation authority. Further attempts must be made to bridge the simplistic and contradictory concept of education for young children as being opposed to care.

In conclusion, California can be proud of more than a century's activities in licensing for the protection and care of children. Just as concepts, needs and potentials brought changes to licensing statutes and activities in the past, so they will in the future. This brief history will hopefully provide readers with a view of the accomplishments of the past, and a vantage point from which to set new directions for the future.

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THE BASIC ISSUES IN DAY CARE LICENSING*

I

This paper deals primarily with certain basic issues of day care licensing but before coming to them, a brief prefatory comment on the history of day care licensing might be in order. It is this: compared to twenty-four hour foster care--either institutions or foster homes--day care licensing would seem to be a Johnny-come-late to child care regulation. Now this lateness in day care licensing has proved to be both good and poor. The goodness derives from the fact that day care licensing has profited from the refinement of child care licensing that has been going on for the past third of a century; that is, since the 1935 Social Security Act made federal funds available to the states for child welfare service operations including licensing. The negative of this late development is that although day care licensing has many points of similarity with other forms of child care licensing, it also has many differences. Yet, there is much evidence to suggest that these differences have not been recognized in the formulation of day care licensing acts. Figuratively speaking, day care licensing seems to have been "jammed" into the standard child care licensing mold regardless of fit or appropriateness. To undo, possibly, some of the mistakes in previous day care licensing, constitutes one of the primary teaching and learning aims of this paper.

II

It would seem that if day care is going to be validly and responsibly regulated by the state, three basic questions must be raised and dealt with. The three questions are: (1) Should day care licensing, particularly group day care including centers, have a separate licensing law and operation distinct from other forms of child care licensing? (2) Where should day care licensing be administratively located? (3) How much of the safeguarding and upgrading of service can licensing carry in relation to possibly other regulatory programs that might be implemented? Each of these will be dealt with for the purpose of initially clarifying the issue--not to give final answers.

(1) <u>Should Day Care Licensing Be Statutorily Separate From Other Child Care Licensing Programs?</u>

At first glance it might seem that a good case can be made either for or against statutory separateness. However, full analysis points up a number of intrinsic differences in the operations (as well as the cultural

*A revised and edited version of a paper presented at the 1971 Minneapolis Conference for the Education of Young Children.

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attitude towards day care) that would seem to make for a separability in regulation. For example: In twenty-four hour foster care, there is a child protective function which theoretically as well as empirically is not present in day care. Twenty-four hour foster care is truly substitute parental care. Both the licensing authority and the placement agency, if present, must take on a protective role. This protective role plus, in some instances, a sort of social advocate function does not tend to develop in day care operations--at least in the same way. Generally speaking, the parent or responsible adult using day care not only sees the child before and after care each day but has daily contact with the service and is in a position to make certain observations and to confront the operator and/or staff regarding possible inappropriate care--if it is recognized. Also, it is to be noted that the day care operator is in a sense more economically related to the parent in day care operations than in twenty-four hour foster care, especially when the child has been placed by an agency that makes the payments. In fact, there is reason to believe that most or a large majority of adult users perceives the function of day care to be fundamentally different from twenty-four hour care. Instead of seeing it as substitute parental care, it is regarded only as supplementary and/or complementary service; that is, as an extension of their own care and responsibility.

The differential attitude towards the function of day care and day care licensing was rather forcibly brought out in a research program carried out at the School of Social Work (University of Southern California) by several excellent master degree students. They interviewed forty middle-class mothers of various ethnic backgrounds as to how they perceived the function of day care licensing. All the mothers knew something about licensing and all felt positive about its general safeguarding function, especially as to life-safety aspects and its "checking on the character of the operator and staff". But in many instances, this is also where the perception ended as to the licensing function. To such questions as "Should the licensing worker check on or supervise the day care program?" or "What should the licensing authority do as to the socialization aspect of the child in day care?", the reply of the overwhelming majority was to the effect that this was not a function of the licensing agency. With much statistical frequency, a rejoinder was added such as "This is not necessary; don't I see the child and the facility every day myself?"

Perhaps one might speculate that some mothers who saw no need for the regulatory agency to function in this latter manner were "compensating for guilt" over working and it represented their way of reassuring themselves that they were still assuming full responsibility for their child's development. But regardless of the dynamics for this attitude, the findings from this study and other observations leads to the conclusion that there is a cultural difference as to the function of day care licensing as compared to twenty-four hour foster care licensing. Thus, to the extent that this is a correct observation, there would seem to be much operational valor in achieving a separability in the statute as well as in the form of standards and perhaps in the administrative location of the licensing responsibility. This last, administrative location, leads to the next basic issue.

(2) Where Should Day Care Licensing Be Administratively Located?

Currently, although there are a few exceptions, mainly health departments, statutorily the day care licensing responsibility is administratively handled by state or state-local departments of public welfare which also tend to have certain other child welfare responsibilities including twenty-four hour foster care licensing. It is also important to note that most of these public welfare agencies have the administration of financial assistance programs and it is the financial assistance program probably which the man-on-the-street associates with the public welfare department. In fact, in many instances this man-on-the-street is surprised to learn that there are child welfare programs in the "welfare department".

Day care and day nursery licensing coming historically later, at least in many instances, seems to have been assigned to the same licensing authority having responsibility for twenty-four hour foster care licensing without too much community or legislative consideration or discussion taking place. This is, perhaps, explained in part due to the fact that day care as a community service has tended to expand during periods of crisis--economic or military. During the 1930's depression, day care programs developed as part of the "W.P.A." This development was motivated to a great extent to put people to work and their regulation was probably not of major community concern. Then came World War II and the Lanham Act which historically universalized day care and established a pattern of federal funding. While there was concern at this time, the regulation aspect was certainly not the most pressing during this emergency period--especially the problem of where it should be administratively located. During the post World War II years, day care continued to expand but again, questions around day care licensing probably seemed minor in comparison to "big post war problems" such as economic adjustment and inflation, racism and civil rights, just to mention a few. So, the question of administrative location remained. However, now there is somewhat of a location crisis precipitated by almost an universal reorganization of state welfare departments.

Hopefully, the "shotgun wedding" of uniting child welfare programs with public assistance programs into state departments of public welfare which took place following the 1935 Social Security Act will be undone! To continue this hope, perhaps there will emerge a system of state department of social services for family and children, separating social service administratively from assistance programs. Should these state or state-local departments of family and children welfare services become a reality, then it would seem that day care licensing might well be assigned to these new departments. But if politics, taxpayers associations, and reorganization efficiency experts hold sway and state child welfare services are continued departmentally with economic assistance programs, then it would be the writer's opinion that day care regulation might more validly be administratively located in some other department such as health or possibly a newly established "independent" office of child development. This new type of office of child development would at least have a separate formative existence and only at a later date be transferred to an appropriate department, or expanded into a new public department.

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At this time, the possible assignment of day care licensing to state health departments would seem preferable if there is any possibility of health departments developing a dynamic division of maternal and child health. The writer's observation of day care regulation by the Ministry of Health in England rather than by the Home (Welfare) Office were of a favorable nature and lead to a belief that health departments in this country might have a potential for day care regulation, especially family day care, which has not been fully explored or considered. State and local health departments have two things going for them in respect to regulatory functions which tend to be lacking in present day public welfare: (1) they tend to have a good community image (at least better than "welfare") which seems to be most important in respect to securing support for a program like licensing; and (2) they have a long history of the administration of programs carrying considerable authority and regulatory power.

Before considering the possibility of assigning day care licensing to a new office of child development, a statement should be made as to why not department of education. To those who believe that the department of education should play a much greater role in respect to administering day care programs including extended day care, it may follow that they will hold that the department of education likewise should have the regulatory function of day care provided under private auspices. Such a position is perhaps theoretically sound but the history of the departments of education in respect to exercising regulatory power especially in respect to private schools would not presently argue for their having the day care licensing function assigned to them. Given this failure in regulatory achievement plus the financial crisis in public education, it would be only the exceptional situation where the department of education might be expected in reality to take on a day care regulatory function with "vim and vigor".

Although perhaps an unrealistic one as far as the immediate present is concerned, a possible development of independent offices of child development separate from the traditional departments of welfare, health, and education might be the best locale of day care licensing responsibilities. Such an office of child development would, of course, be multi-functioned--carrying among other responsibilities those of implementing community organization programs for child development services, formal and informal educational programs of child development, possibly the operation of child development community clinics or parents' consultation service and possibly the licensing and/or accreditation of child development personnel. Thus, the assignment of day care would be appropriate--"a natural". Also, such an office of child development might play an important role in advising or certifying day care services in relation to "purchase of service" by public agencies using state or federal funds--fiscal regulatory administration.

Finally, in respect to the administrative location of day care licensing, passing attention needs to be called to what may well be an ominous regulatory development. It is the proposal that is popping up in many parts of the country that there may be one "big" licensing agency which would have all or most of the responsibility for implementing any state licensing program regardless of function! The advocacy of a big licensing office results from

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many factors, but the tremendous increase in regulatory programs is no doubt the major one. It is granted that the problem of multiplicity of regulatory programs and agencies needs to be dealt with, but in the opinion of the writer the proposal at hand is not the best answer to the situation. In fact, seldom does a simplistic answer solve a complex problem. Certainly much of the criticism of too many regulatory programs and agencies might be lessened by a refinement of state administrative procedure agencies. However, if this simplistic answer prevails, the regulatory leviathans are set up, there is a real likelihood that day care licensing will be a "sitting duck" to be shot at for immediate inclusion. This will be most unfortunate for children, for parents, positively motivated operators and the community in general.

(3) How Much In The Way of Safeguarding and Upgrading of Day Care Can Be Achieved Through Licensing?

It is important to remember that licensing is not the only type of regulatory administration. Accreditation programs that may--usually--go beyond licensing requirements and thus provide additional safeguards as well as upgrading the program need to be seriously considered. These accreditation programs may be under public or private (voluntary) auspices. For example, the Child Welfare League of America is a good example of how a voluntary accreditation agency can go beyond public licensing. However, in calling attention to an example of accreditation that is private or voluntary in nature does not imply that some type of accreditation programs might not also be under public auspices. In fact, it would be quite possible for a child care regulatory agency which has the licensing responsibility to also certify that special standards beyond the licensing function have been met. In fact, this might not be too bad a way of dealing with "purchase of service" situations where a certification of a certain quality of care would justify the public paying a higher rate. However, in the long run it would seem that the ideal "arrangement" will be to have a complementary child welfare regulatory "package" in which the public agency licenses and the voluntary agency accredits--or goes beyond the minimum safeguards. The licensing requirements would be an absolute "must" in which there is widespread community participation (especially by the users of the service) in the formulation of standards, and thus should help assure the licensing authority of support in enforcement operations. The accreditation standards, while also reflecting widespread community participation, would be also a par excellence means by which professional expertise could be "pipelined" into regulatory standards.

(4) A Policy Note On The Regulation of Family Day Care.

The matter of family day care regulation npeds a special comment. Such a comment is in order because there are many who believe that there has been a distressing lack of interest and development of good family day care. Should the advocates of this type of service prevail, then the regulatory aspect of it will take on correlative importance. Granting an expansion of family day care, or even an endeavor to do so, two regulatory problems arise. The first relates to the organizational affiliation of this type of service and the second as to what type of regulation is appropriate.

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The organizational question can be summed up, technically, in this manner: organizationally speaking, is family day care a "natural" affiliate of group day care? Some think not and say it is more closely related to twenty-four hour foster home care and should be operationally linked to that program. Others believe family day care should be organizationally separate from both group day care and twenty-four hour foster home care and that eventually large scale operations of family day care will be present. These family day care large scale operations (the name "day care system" has been proposed for these agencies) will be somewhat analogous to traditional child placing. These agencies providing the family day care placing service might also take on other services including the providing of consultation to parents using family day care. Other services of a day care system would be a supplementary parental care nature such as providing the transportation to the family day care facility, and even in an emergency situation providing in-home care services when the child is not able to go to the family day care. Thus, insofar as family day care services are primarily and predominantly operated apart from group day care, then it would seem to follow that the administrative location of the regulation of family day care should reflect the separateness rather than deny it.

A second question that also needs to be raised if family day care expands greatly: Should it be licensed or would some other regulation be more suitable? The author of this paper believes that licensing of day care is not a preferred regulatory way of dealing with it. Rather than a licensing approach to family day care, it is proposed that there be a simple program of (official) registration of persons engaging or holding themselves out as ready to engage in family day care operations. Then, coupled with this registration would be an "inspectional" service. It is feasible from the viewpoint of implementation and enforcement and in the long run would provide as much--if not more--safeguarding and upgrading of service than is achieved under licensing.

III

In ending, it might be well to recall the old statement: many people act without knowing which results in failure and disappointment, but a greater tragedy is to know and not act upon one's knowledge. At an earlier day, due perhaps to crisis situation when day care policy formulations took place, we acted without knowledge or proper analysis of the situation. Today we have much more knowledge as to what is best in day care policy formulation. And it will surely be a great tragedy for both day care children and parents who use day care if we do not have the courage to implement our knowledge and our experience rather than perpetuate the tradition and to proceed on a basis of too little too late!

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AN OPERATIONAL DEFINITION OF LICENSING*

The following ten propositional statements are put forth as an operational definition of licensing, with special reference to the field of child care. As such, they are not intended to produce a final answer as to what is child care licensure. Rather it is hoped that they will constitute a beginning conceptualization of licensing that can be added to, modified and further refined--in short, something that can be worked with and/or against.

1. Licensing is a form of regulatory administration. This is a term that licensing personnel do not tend to use, but I think it is high time they adopted it.

2. Regulatory administration, historically, has been primarily concerned with the safeguarding of consumer rights. Back in the 1880-1890's there emerged in mid-America what is historically known as agrarian radicalism. The "small" farmers, as consumers of railroad services, of bank credit and mortgage loans felt that they were being discriminated against. They organized the Populist party as a means of doing something about it. They were not socialists in any sense of the word; that would have been their last thought. In fact, they were really extreme "rugged individualists", settlers who had come the overland trail the hard way. As such, they wanted one thing: the restoration of equal opportunity! This was to be achieved through regulatory administration so that the "big shippers", and the small shippers, for example, paid the same amount of railroad rates with no relation to size. The famous Illinois railroad rate regulation Act of 1872 was their first major achievement. This eventually led to the Interstate Commerce Commission (ICC), often referred to as the "grandfather" of federal regulations. After 1900, the focus of regulatory administration shifted somewhat to include "social-survival" consumer rights. Upton Sinclair, in 1906, wrote The Jungle. (It is known in American literature as one of the first great "much-raking" books.) Sinclair, according to his own statement, intended primarily to expose the working conditions in the meat packing industry. But in doing it, he also reported on the terrible lack of sanitation in the industry. The result, ironically, was that very little was done about the working conditions--at that time--but shortly the first meat packing inspection law was passed. (Sinclair said in effect, "I aimed at their hearts but I struck their stomachs.") Following this, regulatory programs were developed in many different directions--social as well as economic.

3. Regulatory administration always involves a triad of operational activity--(1) standards formulation, (2) conformity determination, and (3) administration of positive or negative sanctions: 1) Standards, rules and regulations, or simply, requirements must be formulated officially by a group with community standing. Standards may be said to be official or

* Paper presented by Norris E. Class to the California Child Development Licensing Task Force, August 23-24, 1974, Davis, California.

legitimatized community expectations--operational prescriptions. 2) Standards, having been formulated, are then applied to specific situations to determine conformity or nonconformity. In this sense, all regulatory administration involves both "teaching" and "grading". The regulatory authority must help clarify that which is prescribed and then must judge--grade--how well the standard (requirement) is met. 3) Having determined the nature of conformity, positive or negative sanctions are administered. If there is complete or substantial conformity, approval or permission to operate is granted, and made manifest by some type of written document termed a "license" or "certificate". When conformity is not present, approval is withheld and, if operation does take place, negative sanctions in the form of criminal law penalties may be forthcoming.

4. Regulatory administration can be dichotomized into (1) enabling type of authority and (2) directing type of authority, licensing being in the first category. In the enabling type of regulatory programs, such as licensing, "things have to be done in advance", i.e., requirements have to be met before operations start. If I want a license to practice medicine, I must acquire and demonstrate in advance certain knowledge and skills. If I want to run a private hospital or a day care center, I have to have a certain type of structure (to start with), I have to present an operational plan, I have to hire (or agree to hire) a certain number of persons in respect to the number of persons in care, and so forth. Licensing is always future oriented. In the directing type of regulatory authority, there is formulation (setting) of standards that will be applied to specific situations but it is not necessary to demonstrate conformity in advance of starting operations. Child labor regulation is a good example. No child may work in certain types of factories unless there is conformity to the child labor law and standards. The child must be of a certain age, may not work at hazardous machinery, and so forth. However, the industrialist does not have to show conformity in advance. What is necessary is that he submits to inspection. If he is in conformity, he can go on operating but he receives no license. It is conceivable that this type of regulatory program might be more appropriate for some forms of day care than licensing, for example family day care.

5. The investigation of some types of standards in advance, as required in child care licensing, may present difficulties. As just indicated, licensing being an enabling type of regulatory authority requires one to meet standards in advance. Now, it is one thing to say and determine that you meet certain types of standards in advance, especially those that are tangible and readily measurable quantitatively speaking, e.g. floor or play space. It is much more difficult to determine conformity to less objective and tangible standards relative to care programs. This is especially so in light of the fact that the children are not there prior to the licensing! (Parenthetically I should like to say this: I would hope that some day a group like this will take a strong position that we should have a two-step kind of "interlocutory" approach to licensing. First the "tangibles" would be approved but the less tangibles will require a future plan of operations that seems to meet requirements but licensure will not be finalized until the children are in the facility and there is opportunity to inspect "the reality situation".

6. Licensure generates immediately a vested interest for the licensee. For hundreds of years the courts have so ruled. Thus the whole system of due process is available to the licensee before revocation or termination of the license can take place. The operational implication of this seems to be that before licensure, the applicant has a "one hundred per cent" responsibility of demonstrating he meets standards but the moment the license is issued the regulatory agency has the one hundred per cent responsibility of showing he does not conform and the license should be terminated. In the old days we used to say in effect, "Well, we are not quite sure, it is kind of questionable, but we'll issue the license. If 'things' do not go right, we'll revoke or won't renew!" It is really not that simple. Revocation is quite different from denying an application for a license, operationally speaking.

7. Generally speaking licensing is unknown to the common law. This is most important in respect to licensing personnel who may have a "crusading mentality". When a program is not known to the common law, one tends to be restricted to operations which the statute specifically stipulates you can do. For example: Three or four years ago, when I was conducting licensing workshops here in California, I would ask licensing workers if they provided "licensing consultation". Generally, they said yes. One might wonder if what they were doing was illegal or, at best sort of "extra legal". There was nothing in the previous child care licensing statute that provided for licensing consultation as such. If it was legally authorized, it must have been done under the general child welfare services act. Now don't mistake that I am saying I do not want consultation to be provided. But if the licensing workers are to provide it, then there should be a provision for doing so in the licensing statute. This would put it on a firmer or more secure operational base and contribute to increased accountability when given.

8. It is important that child care licensing be clearly distinguished operationally from child placing. In the past, the failure to differentiate between licensing and placement has contributed to faulty personnel administration and public misunderstanding of these two respective activities. Taking placement first, an analysis of child placement highlights four major tasks: a) placement diagnosis, b) handling the separation experience, c) dealing with problems of congruence or incongruence between the child's own home and that of the caretaker and d) dealing with the confusion that often occurs over implementation of parental rights when the child is in an out-of-home care situation. In contrast to child placement, the major tasks of licensing include: a) interpreting the fact that child care is an activity affecting the public interest and is therefore recognized by the State as an area of regulation; b) formulating and reformulating licensing standards which will reduce the risk of improper care and enhance the possibility of wholesome care; c) evaluating each applicant's situation to decide whether or not to issue the license; and d) supervisory activity to maintain conformity to standards and, usually consultation to upgrade care. These sets of operations are drastically different.

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9. Child care licensing is not a protective treatment service. Like placement, child care licensing is often confused with child protective services, a treatment operation. All child protective treatment services involve two things: 1) a given child has been hurt physically or psychologically or some combination thereof; 2) the protective service worker has an interactional treatment relationship with the child (and/or parents) using his professional self and community resources to achieve remedial action. Neither of these are present in child care licensing. Licensing workers do not, as such, have individual treatment relationships with children. The function of licensure is to reduce risks in child care situations. If a child is hurt, by chance, in a licensed facility, he should be individually serviced by a protective worker the same as if he were in his own home or in a non-licensed situation. The fact of neglect or abuse on the part of a licensed child care provider, however, may well be the basis for revocation action by the licensing authority.

10. Licensing is essentially one thing; namely, a preventive service. The public health model of preventive services is applicable to child care licensing. To take an example: a sanitary engineer walks by a swamp. He sees mosquitos flying about. Given certain conditions he can, using the authority of the state police power, order the swamp drained. Why? To prevent somebody at a later date, when walking by, from being "bitten" by a mosquito that has one of those yellow fever bugs that make a person ill. This is an action to reduce risk--in the future. Moreover, it is important to note, like licensing, it is not only future oriented but is mass centered. The action is not focused on a given passer-by. It is concerned with anyone who might be going by just as in licensing the target for risk reduction is not a given Tommy Brown, but any Tommy Brown who happens to be in the facility. Finally, it should be noted that should the risk-reduction not take place after the regulatory action, (a person somehow or other manages to get yellow fever) there is certainly no assumption that the sanitary engineer should deal with the sick person, any more than it should be assumed that the licensing staff should provide individual protective care treatment: To each his own--function.

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LICENSING AS AN ADMINISTRATIVE PROCESS

At our last meeting I presented a conceptual analysis of licensing as a political-legal phenomenon. Today, I would like to complement that with a conceptual analysis of licensing as an administrative process. Ernest Freund, professor of law at the University of Chicago and regarded by many as the father of administrative law in the United States, once defined licensing in nine words: Licensing is the administrative lifting of a legislative prohibition. What he meant by that was this: The legislature has acted by defining an area of operational activity as possessing a public interest. (By public interest, I mean an activity that has been officially declared as being vitally significant for the community.) Depending on the activity so defined, the legislature then prohibits the activity until there is official permission from some administrative agency. It may be the Board of Medical Examiners, or the Board of Motor Vehicles, or the State Department of Health, etc. Some administrative chief has got to say that you - Joe Doaks - can do it; i.e., you have official permission to operate. This means the administrative agency has to engage in a process - really in a status/movement operation. You don't have status to do it today; but, six weeks from now if you are lucky, you do have permission. Sociologically speaking, all licensing must be recognized as a status movement operation on the part of the State to cloak someone with a given political or legal authority in order to act in a way that other people without licensure are forbidden.

I have handed out a schema that might be titled: the functional aspects of the licensing process. [See page] With the possible exception of "Renewal", (No. 7), all formal, traditional facility licensure involves these steps or phases: 1) Interpretation, 2) Handling of Inquiries, 3) Application-Making, 4) Investigation, 5) Issuance or Nonissuance, 6) Supervision and (possibly) Consultation, 7) Renewal, and 8) Enforcement. Within the time limit I shall make eight enumberative comments.

1. *Interpretation. In my opinion, interpretive operations are the most critical determinant in the success or failure of a safeguarding program. This is true for three reasons: First, there is the educational aspect. People are not born knowing that they should have a license; they must get the message. This is a responsibility of all regulatory authority. In contrast to a criminal enforcement action, you cannot proceed on the assumption that one is supposed to know the law. Second, interpretation is necessary from a socio-psychological point of view. In a pioneer democratic society, there is a tremendous resistance to state intervention - which licensing is. Only through interpretation do you tend to overcome this resistance. Only through systematic, widespread interpretation do you achieve what the sociologists call an "acculturation of the phenomenon". It has taken health departments many years to get across the idea that once you are exposed to TB, you need to have a chest*

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examination. Although this is certainly an invasion of your privacy, today it is expected behavior, thanks to programs of interpretation. Third, there is a positive public relations potential in good interpretation. In giving the message that you must have a license, you may also give a companion message: there is value in the license, not only for the children but for the licensee and for the community. In short there is something positive for everybody!

2. Inquiry Handling. As a result of people getting the message, some will write in, call in or walk in to find out about these requirements that they must meet if they wish to operate. The regulatory agency should strive for responsible application-making. Unfortunately, the handling of inquiries today with much frequency, is badly done. A person writes in, and by return mail we send them the standards, offering no consultation or technical assistance. Then we have problems because they get an ego investment in the applying, in winning the game of getting a license rather than thinking through what is really involved in doing day care. This inquiry operation as I see it necessitates two types of technical assistance service. Technical assistance in respect to what I would call the "substantive" nature of day care operations is one type. Ideally, in my opinion, this should not be done by the licensing authority; it should preferably be done by a child care or child development consultant. But when it comes to what is involved in getting a license, then that is a responbility of the licensing and sufficient personnel and funds should be present to carry it out properly.

3. Application-Making. There is lots of confusion in this area of licensing administration. It is mixed up with investigation. The basic aim of the application-making phase is this: the person submits to the jurisdiction of the licensing statute to be investigated as to conformity or nonconformity with the standards. The collection of data, documents, and plans, which often takes place simultaneously with application, is really a part of the investigation. Theoretically this should not be done prior to your having the applicant's signature on that piece of paper giving permission to investigate, to invade his privacy. Chester Barnard in his classic book on administration, The Function of the Executive, calls this moving the individual into a "zone of acquiescence". The basic function of the application-making is making certain the person is willing to permit the state to acquire information by which a judgment will be made as to license issuance or not.

4. Investigation. The alpha and the omega of regulatory administration is the right to conduct an investigation to determine conformity. This means that there must be a measuring operation in order to arrive at uniform, reliable findings. I am convinced, from my observation in many states, that an investigation of a given set of standards in one city does not result in the same findings that would be produced in another. Yet without uniform practices and equal treatment, operations licensing is without a valid constitutional basis.

5. Issuance. You give permission to the state to investigate; then a decision has to be made as to whether there is sufficient total conformity to

issue the license or not. The issuance then is official permission to do what is otherwise legislatively prohibited. It is a very high level use of political authority; perhaps the highest in the state. This is no mean, indifferent bureaucratic job. It is the use of the sovereign power of the state writ large. In the finan analysis, the issuance phase has two component parts: 1) It is a communication operation. That is why posting the license is so important. It is a means by which the state says in writing, "We have investigated this person, and we believe that he, she (or they) meet the regulations." 2) There is a ceremonial aspect in license issuance that needs to be noted. The issuance indicates the end of the investigation (at least for the time being) and elevation to a given status that carries certain privileges of operations. Properly dealt with, I believe the ceremonial aspects of licensure could become a factor in positive enforcement.

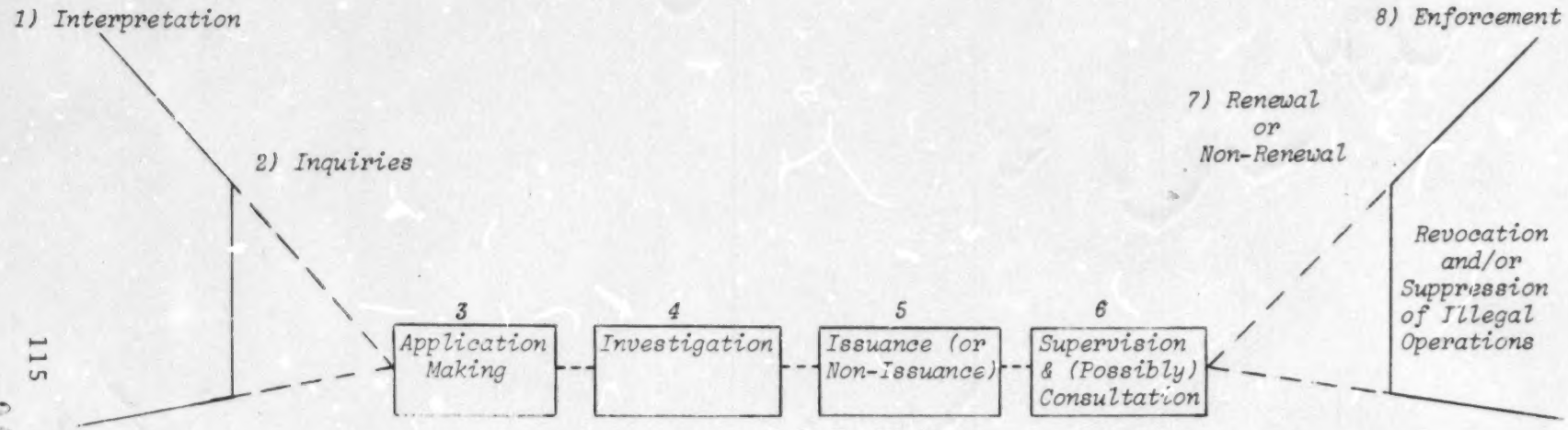
6. Supervision and (possibly) Consultation. You will note I said supervision and possible consultation. In regulatory administration, as it relates to out-of-home care facilities, supervision is generally present, statutorily speaking. Operationally, supervision is official observation to determine continued standard conformity. It is the price one pays for getting permission to do that which may be prohibited to other persons. Consultation, in contrast to supervision, tends to be defined as activity that goes beyond the meeting of regulations - and has as its goal the upgrading of service. Now, the first thing we need to note about licensing consultation is that it tends to be a regulatory anomaly. Regulatory administration generally does not have this feature. I don't think you ever heard of a Board of Medical Examiners sending out somebody to say "Doc, what do you think about using these new antibiotics for pneumonia?" Although, as I stated, licensing generally does not tend to include this activity, the state legislature may write it into the licensing statute and it can be done. However, we need to get one thing clear - that if the statute does not provide for consultation, then the providing of consultation by the licensing authority may, in a sense, be either illegal or extra-legal. It is illegal because as we said last time licensing is unknown to the common law and therefore you do only what is in the statute. Also in some instances, you can probably derive a consultative function from other child care or child welfare legislation. However, when that is the case, you have a problem of operation: You must put the person on notice that this is consultation and it is not an intregal part of the licensing responsibility that brings you to the facility.

7. Renewal. The renewal feature, which appears in most child care licensing laws, is like consultation in that it does not tend to be present statutorily, in many other types of licensure. I'm a doctor today; I'm a doctor tomorrow; forever. However, I may have to re-register and pay a fee to keep my license intact. Now the reason for not having licensure renewal was established at the first session. Licensing is an enabling type of regulatory program which you have to do things in advance and once you do these things, immediately there is generated a vested interest in the license. And so, right to this moment today, although we've been engaged in licensing renewal operations for almost a century, there is still perennial confusion as to whether the renewal is what in technical

terms is called de novo (anew) or, to use another phrase which is used in regulatory administration, is it on the record? Nobody seems to know for sure. I will give you my guess. It seems to me because in many other regulatory programs you don't have the renewal, but only the re-registration, the legislature in putting the renewal in, did it to assure from time to time a higher level investigation than would be present in "routine" supervision. Otherwise, there would be no point in the renewal. If I were in a top regulatory position, I would make the assumption that there was a necessity to check every standard at the time of renewal. I would do this because when the license goes up, the State of California is saying, we have inspected that facility and it meets all standards! I should add that practice varies. Really, it seems to be a hybrid; there is a little bit of original investigation and then there is a sort of "trying it on the record" in respect to the presence or absence of complaints and such as that. This does not make for uniform operations and equal treatment.

8. Enforcement. The functional nature of licensing enforcement is to keep standards in effect wherever regulative activity takes place. Therefore, there are two kings of enforcement. Positive action and negative action. Positive action may involve many things, but the triad of important operations are 1) technical assistance at the start, 2) good teaching of the regulations at the time of investigation, and 3) supervision. Kenneth Culp Davis, a leading authority on administrative law, refers to the function of regulatory supervision as being able to reduce the need for litigious activity. In respect to negative enforcement, there is also a triad of operations. First, there is the denial of the application, which includes nonrenewal. Second there is revocation, which is the termination after giving permission; and third, there is the suppression of illegal operation. In my opinion, there is a scandalous lack of negative enforcement. You cannot acculturate a social institution without negative enforcement. Only through negative enforcement and appeal (when you lose the case) do you know what the courts will support. The courts, in the final analysis, officially determine what is "expected behavior". So I would say that only through negative enforcement do you truly legitimatize a social institution.

FUNCTIONAL ASPECTS OF THE LICENSING PROCESS



1. Interpretation
2. Inquiries
3. Application Making
4. Investigation
5. Issuance (or Non-Issuance)
6. Supervision and (Possibly) Consultation
7. Renewal (or Non-Renewal)
8. Enforcement: Revocation and/or Suppression of Illegal Operations

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Norris E. Class

OUTLINE OF PAPER

On

THE PUBLIC REGULATION OF FAMILY DAY CARE: AN INNOVATIVE PROPOSAL

1. *Why licensing is not the appropriate regulatory answer in the field of family day care (fdc).*

   a. *Lack of social visibility.*
   b. *Informal and transitory nature of fdc.*
   c. *Number of units of fdc make it costly.*

2. *In addition, licensing has tended to be reserved for the regulation of more technical activity--medicine, pharmacy, etc.*

3. *In light of the questionable appropriateness of licensing as a regulatory device for family day care, an alternative regulatory proposal in the form of registration-inspection is put forth.*

4. *Major features of this registration-inspection approach are:*

   a. *Registration of fact of providing fdc and reporting children under care.*
   b. *Signed statement of awareness of the nature of state standards and belief that operations will conform--or agreement to achieve conformity.*
   c. *Willingness to submit to inspection.*
   d. *Willingness to supply users with a copy of state standards and manner of filing complaints.*

5. *This proposal needs to seem as a regulatory "hybrid" operation: part enabling and part a directing type of regulatory authority.*

6. *The inspection would be carried out by a "child care visitor" whose functions would be:*

   a. *To determine substantial conformity to state standards (and, when lacking, to help registrant achieve it).*
   b. *To provide consultation in relation to child development generally and out-of-home care of children specifically.*
   c. *To link fdc providers and users to community education and other service programs relating to child development.*

7. *As proposed, this program of registration-inspection would depart from most traditional child care licensing in respect to formal "clearance" operations by the fire marshal and public health personnel and requires further consideration as to enforcement administration.*

8. *Gains from this approach would be:*

   a. *To make for greater responsibility in assuming the role of fdc provider.*
   b. *To make the investigational operation more pragmatic: it deals with "real" children.*
   c. *To involve parents to greater extent in the safeguarding operation.*
   d. *To facilitate community planning and coordination.*

9. *This registration-inspection program should be regarded only as a beginning public regulatory activity to insure <u>minimal</u> safeguards.*

10. *To achieve a positive community regulation of fdc, this public program of registration-inspection needs to be complemented with a program of fiscal regulatory administrations and programs of accreditation under private as well as public auspice.*

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THE PUBLIC REGULATION OF FAMILY DAY CARE: AN INNOVATIVE PROPOSAL*

The position of this paper is that the public regulation of family day care by means of traditional licensing is a questionable community approach to safeguarding the services and upgrading the quality of care. It is, therefore, contended that alternative regulatory approaches should be considered. An alternative approach in the form of a "registration-inspection program" is herewith proposed and speculative gains are considered. It is emphasized however that this proposed approach of registration-inspection is only one part of a community regulatory system to safeguard and upgrade family day care.

I

The standard tests of an administrative operation are (i) effectiveness, (ii) efficiency, and (iii) economy. Applying any or all of these tests, family day care licensing receives a very low score or rating.

The lack of community or social visibility of family day care, say, in contrast to group day care, increases the difficulties of achieving comprehensiveness of implementation. Thus, there is a lower effectiveness of the licensing law as a safeguarding measure for the total community.

The ease and rapidity with which family day care arrangements come about create problems as to efficient licensing administration. Traditionally, the goal of any child care licensing program is to deal with the situation before the child is in the facility. The whole licensing process is a premise upon this assumption. Yet, empirically, we know that much day care is never licensed and much which is licensed is licensed only after the fact of initial operation. The task of licensing a person "presently in business" is a very different task than dealing with the person before operations have started. This mixing of licensure before and after the fact is bound to lower the efficiency of staff operation as well being conducive to the creation of a poor image in the community.

Thirdly, and perhaps the most important determinate in proposing a departure from a licensing approach to family day care is the cost factor--economy. Licensing is not only cumbersome and frequently a delayful operation but it is costly, especially so in

*A revised and edited paper presented at a conference on family day care conducted by Pacific Oaks College (Pasadena, California) 1971.

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light of the safeguards achieved. Thus, it is one thing for the state to develop at considerable expense a structure and operation for safeguarding by means of licensing a limited number of group day facilities each serving a sizable number of children, but it is really something else to apply this elaborate process to almost a countless number of small size units of child care which may be of short duration and which the user, i.e., the parent, is in a position to "check" on the service daily and to deal immediately with what may be regarded as improper or detrimental care.

In addition to the questionableness of using a licensing approach in family day care, when tested by the triad of effectiveness, efficiency and economy, there is the overall question of cultural-legal appropriateness of using this type of a regulatory instrument for family day care. Licensing is a highly formal investigational operation to reduce hazards especially of a technical nature. On the other hand, family day care is characterized by informality of operation and must, in the final analysis, be approached in a subjective manner. In professional licensing, such as medicine, the state endeavors to insure the presence of a technical competence before the person starts to practice, which is assumed to be a life-time proposition. In family day care the opposite somewhat prevails. The user seeks a highly personalized service which may be improved by certain teaching and learning but, hopefully, a service that is not technicalized or bureaucraticized the way large group day care must be. To use licensing as a means of safeguarding and improving the quality of this type of service is analogous to calling in a commercial mover to rearrange the furniture of a home.

II

In light of this finding of questionable appropriateness of licensing as a form of public regulation of family day care, the following is proposed: <u>namely, what might be best termed at this point of discussion a registration-inspection approach</u>.

The registration-inspection approach would operate in this fashion: any adult person providing family day care to one or a small number of children would be required to register the fact of operation and to report the names of children being so cared for. The locale of registration needs a lot of consideration before a final operating decision is made but it might be the office providing the inspection--and hopefully, this office would also be responsible for providing other services relating to child development such as a dynamic local maternal and child health might well do.

Upon the receipt of a statement of intent to provide a limited amount of family day care, such a person would be supplied a copy of state standards of family day care and other literature relating to family day care. In finalizing the registration, the provider or would-be provider would have to "sign" that she had read the standards

and that she would meet or would endeavor to meet these standards immediately. The registrant would also sign that she was aware that reasonable inspection of her home and care would take place including the right to contact the adult users of the service. The registrant would be required to give users a copy of state standards of care which would also carry information as to the manner and place of reporting complaints in respect to alleged failure to meet standards specifically or detrimental care generally. In addition, the registrant would be notified of possible negative sanctions applicable by the state if she continued to provide service after a sustained finding of non-conformity and/or detrimental care.

Parenthetically, a note on regulatory terminology is in order: Technically this innovative approach to family day care would seem to be a "regulatory hybrid" operation. The registration aspect, although departing radically in operation from what constitutes traditional child care licensing, must probably be classified as a "license"--as that term is defined in the Federal Administration Procedure Act. (It is certainly an enabling type of regulatory administration of which licensing is the principal specie.) The inspectional activity to determine standard conformity, however, seems to be a separate-discrete-administrative activity generating from what Ernest Freund refers to as a "directing type" of regulatory authority. It is this "directing type" of regulatory authority which would seem to underpin programs such as child labor regulation. In fact, the writer--rightly or not--used the California child labor regulation statute as his model for the present proposal. This regulatory hybridization has significance not only for enforcement but in respect to statutory formulation as well as administrative operations. Therefore, the writer wishes to stress that comments made as to enforcement aspects are tentative--need much further and fuller consideration.

With registration and report of providing care, an inspection would be made by what might be best termed a child care "visitor". The function of this visit would be to determine substantial conformity to state standards and to help the registrant in overcoming deficiencies in respect to standards. The child care visitor would be expected to offer consultation or suggest teaching and learning resources in relation to problems of child development generally and out-of-home care specifically. In fact, one of the important aims of the child care visitation service would be to get the registrants of care involved in community education programs--not only as learners but as "teachers" when such capabilities are present.

Although there is no finalized position as yet, it is tentatively proposed that in most instances there would be no collateral investigations or inspectional activity by the traditional fire marshall or public health office. However, there would be an administrative expectation that the child care visitor (and supervisorial personnel) would be trained through staff development to appraise generally and

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practically the "life safety" aspects of the care situation. Life safety regulation for the purpose of this paper includes requirements for fire safety, sound building construction and sanitation which, in the opinion of the writer, could be generally inspected by a public health sanitary engineer. There would also be an administrative expectation that where there was, in the opinion of the visitor, uncertainty or the registrant challenged the visitor's judgment as to not meeting life safety standards, the worker would have access to expert consultation service in these areas. This expertness might be available in the form of a life safety specialist in the regulatory agency--who would also assist in training--or it might be procured from a commercial consultative service.

The role of a child care visitor, it seems important to note, would not carry the major responsibility for the implementation of negative sanction arising from nonconformity to standards specifically or providing detrimental care generally. This function, which is primarily a law enforcement operation, would tend to be carried by the supervisorial personnel and/or specialized staff well oriented to regulatory fair hearing procedures and court actions. However, there would be an administrative expectation that the child care visitors would be given training in relation to being qualified as expert witnesses and in effective participation in hearing situations.

III

The possible advantage from a registration-inspection approach to family day care might be five-fold:

1. <u>This approach would contribute to self-definition of role taking</u>. The act of registration would amount to the making of a public announcement of assuming the role of family day care provider. From time immemorial human societies have used the public announcement as a means of setting up patterns of expected behavior--witness for example the posting of marriage bans in the church.

2. <u>This approach moves the regulatory investigation or inspection from the abstract to the concrete</u>. A fundamental criticism of licensing family day care is that the investigation should be done in advance of the placement of the child and, therefore, remains at an abstract level of discussion. For a child care licensing person to say that this home is generally o.k. does not provide much comfort to the child for which the care is specifically inappropriate.

3. A third possible gain is that <u>this approach, if properly implemented, could facilitate parent or user participation in the safeguarding operation</u>. Traditionally and empirically licensing tends to be a relationship between the state and the provider of the service. It is a dyad rather than a triad: <u>state</u>, <u>provider</u> and <u>user</u>. In licensing, the state, as it were, theoretically takes on almost full responsibility for the protection of the child--relieving the parent almost completely of this task. Of course, in no way is it possible for the licensing agency to provide this full protection.

Perhaps this myth of full protection by the state results from an "over-sell" of the value of the licensing investigation. In the proposal at hand, the parent or the user selects the provider of the service and must, therefore, approach the situation with a caveat emptor frame of mind. Moreover, the provider of the service must supply the user with the agreed upon standards of care and procedure for lodging possible complaint. Anyone familiar with the licensing of foster family care will probably attest to the fact that many parents or users are, in a sense, intimidated against criticizing the care by the foster parent's frequently expressed statement, "You know I am licensed by the state" which seems to translate into "anything I do is okay".

4. A possible fourth gain, and somewhat reverse from the last one is that many persons provide good family day care operations without a license and other potentially good family day care providers do not apply, both for the same reason: they are unnecessarily fearful about their qualifications. Possibly a simple theorem of licensure application might be: the greater the sensitivity of the persons, the greater the feeling that they would not "qualify" for the license. Yet, the person reluctant to seek a license might be much more confident in respect to having her home examined in relation to children that have been placed there by their own parents.

5. A fifth and final gain is that registration-inspection would bring the family day care problem into a beginning regulatory order which is not present now. This should definitely facilitate community planning. The presence of systematic registration of children under care would make possible epidemiological research as to geographic instances of providers and number of children in care. This should benefit sound day care planning development and coordination.

IV

A final note as to the limitation of this registration-inspection needs to be made. At best it constitutes only a beginning phase, or one part, of public regulation of family day care. Well implemented, it would provide a minimal protective or safeguarding service. Its primary function is to prevent nondetrimental care and only incidentally would it be standard raising in effect. This latter operation of standard raising is important, too, not only for children under care but also for vocational satisfaction of the provider of the service. However, the operational achievement of standard raising will--in the opinion of the writer--more likely take place in two ways. One way, perhaps the quickest, will be through "fiscal regulatory administration",--i.e., setting differential standards and rules of payment for the purchase of private day services by the public agency. The second way will be through programs of "accreditation" both of facilities and child care personnel. These accreditation programs may be under public or private auspices. Perhaps a community regulatory program of standard setting and approving of individual situations under private or voluntary auspices might be developed by the registered providers of

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care, users and/or community interested persons or a combination of these categories of persons. Such a voluntary standard setting and approving association, hopefully state wide, is in a more strategic position to "pipeline" into place within the field because the person seeks the accreditation voluntarily: she does not have to have it in order to operate legally. The motivation for accreditation will generally be mixed but hopefully will include a desire for self-improvement as well as prestige and economic aspects. This accreditation should not be seen as something apart from registration-inspection but as supplementary and complementary to it. The three together--registration-inspection, accreditation, and fiscal regulatory administration--constitute the three major parts of a community regulatory system. One does not displace the need for the others. Each would reinforce the operational effectiveness of the others.

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POLICY ISSUES IN STANDARDS FOR LICENSING OF CHILD DEVELOPMENT RESOURCES AND PROGRAMS

Resource Paper for Discussion Purposes

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Child Care Standards from an Historical Perspective

Present-day licensing standards and guidelines for child development settings have come from a maze of sources in the human care fields: child welfare, health, and education. Originally, most licensing standards and guidelines were very simple and general, based predominantly upon specific environmental and personal protective elements focused on the child. As the years have passed, and as "standards" for all kinds of health, education, and welfare services have evolved, many other elements have been incorporated. Child welfare has translated many of its concerns for the "disadvantaged" child in any type of out-of-home care, including at times an almost overt disapproval of the parent who is not at home caring for her child or children full-time. Health has contributed a worry about communicable disease, a desire to insure that the personal health of the child is attended to, albeit in limited and episodic fashion, and a concern for environmental protection and safety. Education, beginning with an avowed desire to improve the "learning potential" in out-of-home settings, has been placing increased emphasis on training of staff and program content. Until very recently, this uneasy, tripartite collaboration left out the fourth and fifth important components--the consumer and the public.

Standards and guidelines for child development programs began on a local level in the nineteenth century in metropolitan areas of the East Coast, but in all except a few large cities were gradually taken over by the States. Much of this change occurred in the 1940's when state responsibilities in human care services were expanding rapidly. The Federal Government entered the scene in the 1960's when two major sets of Social Security Amendments--those of 1962 and those of 1967--allocated Federal funds to States for the development and improvement of child care resources. This entry of Federal money, with the accompanying requirement of "accountability", gave rise to the Federal Interagency Day Care Regulations. The FIDCR governed all programs receiving Federal money, and in many cases superceded already-existing state regulations.

In this long and complex process, several problems developed:

1. *The variety of professional and governmental groups involved in programs and standards development increased monumentally.*

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2. *Standards began to be developed on a one-model basis--either for a peer-grouped preschool program, or for family day care homes--with little recognition of the existence of many different kinds of out-of-home care for children of all ages or of the potential of relating these various resources to each other.*

3. *The tremendous effort and cost of developing standards which met the approval of all of the previously mentioned disparate groups has made it difficult, if not impossible, to write in ways of upgrading and revising guidelines.*

4. *Standards, which began as altruistic efforts to protect the child's safety and well-being and to promote learning, have now become directly related to available funds for program development and operation.*

In 1971-72, a National Day Care Licensing Study was carried out under the joint auspices of the Federal Office of Child Development and the Office of Economic Opportunity. Through diligent task force efforts and a National Conference attended by over 300 people from many different areas, an attempt was made to develop model legislation and model standards. It was obvious to those who took part in this herculean effort, and who saw their recommendations subsequently changed, shelved, or radically amputated in the interest of cutting potential expenditures for children, that a National approach to this complex subject is not the answer. The publication issued as result of this Federal effort addresses only a handful of priorities.*

Basic Questions and Problems Underlying Efforts in Standard Development

Many questions about child care standards have surfaced as the efforts of thousands of people have gone into consideration of the various issues. Why have there been so many problems? Why is there such widespread dissatisfaction with present efforts? What are the lessons we should learn? Where do we go from here?

In my opinion, the basic problems have been buried in the midst of more superficial quibbles. These basic dilemmas are both practical and philosophical. In this highly-industrialized country, supposedly different and supposedly democratically-oriented, we have not come to terms with four major issues:

1. *We do not value children.*

2. *We offer women few choices in their lives and the care of their children, and piously declare our belief in the importance and sanctity of the nuclear family and the value of the mother-child relationship, without looking at the realities of family life in our society.*

**Guides for Day Care Licensing - Bureau of Child Development Services, Office of Child Development, Department of Health, Education and Welfare, Publication No. (OCD) 73-1053.*

3. Most legislators and professionally trained "experts" come from the affluent middle class, hence have little true understanding of the problems and functioning of families in poverty or in the differing cultures and lifestyles in this country.

4. We have, as a nation, been unwilling to commit the necessary government funds required to update family support services, of which day care (child development services) is only one aspect.

It is obviously impossible to discuss such broad problems in this brief position paper. However, they should be kept in focus as we look at the policy issues relating to standards for child development programs and systems.

General Policy Issues in Standard Development

If we accept the proposition that child care services are necessary, and that they are here to stay--as I do--we must address the following issues:

1. Who should be involved in the development of standards and regulations? Is this a function of the "experts" in various professional fields, each of whom has his own vested interests? Is it the responsibility of governmental agencies having authority for funding for program development or licensing, who inevitably have territorial claims carved out painfully over the years, and who operate ponderously with attendant bureaucratic inflexibility? Does the task belong to those engaged in program operation (private or public), or to the consumers of the service? Who or how many should have a voice?

2. What is the purpose of the Standards? Is it basic protection of the child, of the family, of society, of the public treasury, of the rights of one or another professional group to decide what is essential?

   Is it an attempt to build in the supposed attributes of an already-existing health or educational system, or those of a relatively-affluent middle class family? Is it an attempt to salve the public conscience for years of neglect of basic family needs such as decent income, housing, and personal dignity?

3. What is the scope of the Standards? Should they address themselves only to one segment of society or to all children in out-of-home care? Should they be limited to defined age groups, to a one-model approach to program development, to large-group care, to age-peer grouping or to small family homes? Is there consideration of special needs, e.g., infants and toddlers, children with handicaps, communities with differing resources? Is there provision for flexibility to try new methods or services, to develop new linkages and systems? Is there consideration of

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staff development, of practical criteria for selection, of basic and continuing staff education, of a pay rate commensurate with required skills and the minimum wage laws, of the necessity for fringe benefits such as sick leave and annual leave? Should Standards be expanded beyond the doors of child development services to include regulations covering transportation to and from the child development service, use of public facilities such as parks and swimming pools, and emergency medical resources? Can standards be written in such a way that new methods of health-care delivery could be developed for children?

4. *How detailed and precise should the Standards be? Should they be broad and loose, allowing more flexibility of individual interpretation and providing for the variation between communities (e.g., rural and urban), or should they be precise and specific, requiring exact interpretation? Should the same detail be applied to all aspects of the Standards, such as the health of child and staff, the safety of the premises, the program content, the playground equipment, the administrative aspects, the personal and educational qualifications for staff? Should they be designed so that one licensing inspector can cover all aspects (program, staff, health, fire safety, building code), or can better licensing be provided if each separate community-agent makes his own inspection? Are the requirements specific and precise enough that they can be understood by both licensee and licensor, and can be equitably applied? What is the cost of detail vs. generality, both in dollars and in child well-being?*

5. *What are the provisions for updating, revising, and making other necessary changes? How expensive and complicated a process will this be? Who will have the responsibility for such changes and is the mechanism for such revision precisely specified and mandated on a regular basis? How will changes be translated quickly into effective action?*

6. *What is required in training the investigators (a) to understand the reason for and meaning of each regulation and (b) to apply the standards equitably? Who is responsible for this training? Is the training process revised and updated as regulations are changed? Are funds included in the State program to provide for this basic and continuous training?*

7. *How will the standards be interpreted and enforced? Does the licensing staff have the total responsibility, or will there be resources for technical assistance and consultation, both to licensing staff and to child care resources? How will the relationship between Federal, State and local regulatory groups be developed and maintained?*

Summary

Standards for child development programs have, in essence, grown "like Topsy", with little relevance to practicality, to costs of different elements of

the service, to the complexities of enforcement, or to the possibilities of combining community resources in more efficient and effective fashion. Many voices have been raised, representing many divergent, disparate, and at times incongruent groups. In my opinion, the basic purpose of Standards and regulations is to insure care and nurturance of young children, and to help their families find and utilize needed community resources in rearing their children to effective adulthood. This purpose has been totally lost in a maze of conflicting, antiquated, poorly-designed, and inadequately administered "dos and donts". In a number of states attempting to revise and update the requirements, problems of dealing with administrative snafus and conflicting special interests have often resulted in a focus on "dollars and slots" and total disregard for individual differences in children and communities.

I feel it is essential to view standards, and hence to develop them in their regulatory perspective as simple, easily measurable and well-defined yardsticks, which can be applied equally to all programs or other resources. In this context, much of present Standards content needs drastic revision, and, most especially, reduction! In a preamble to the original Health and Sanitation Section of the Model Code developed for the National Licensing Study, I wrote, in part,

*"Most day care regulations pertaining to health have, to date, impeded rather than enhanced the development of good comprehensive programs, especially for those children in high-risk groups who most need a flexible, community-oriented service. They are too detailed, contain anachronistic requirements difficult to enforce, if not totally unnecessary, and fail to provide for community input of expertise and parent-involvement in designing specific guidelines appropriate to particular circumstances in each locality".**

These comments are equally true, if in fact not even more applicable, to other child care regulations. Those pertaining to program design and program content are particularly difficult to interpret and to apply. Even those concerned with education and certification of staff have so much inherent variance that they really have little meaning.

I feel strongly that Standards must be designed with the child and his needs in focus; that they must be flexible enough to allow for variations in cultural patterns and life styles (which means that parents and community people must have a voice); and that they must be periodically reviewed and revised by a mechanism that allows input from program directors, legislative analysts or other governmental agents, community people, and taxpayers. We must not serve special interest groups, neither should we penalize those in critical need of protection and help.

I would like to see a three-level type of approach: (1) National Administrative Guidelines, which define the types of programs that are eligible

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**Excerpt from Introduction to the Working Draft for the Health and Sanitation Task Force Model Code for Day Care Licensing, National Licensing Study, OCD and OEO, August 3, 1971.*

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for Federal monies, and under what circumstances, but do not write details of program content or structure; (2) State guidelines which provide the licensing organization, set a floor of basic requirements for all kinds of out-of-home care, including resources for technical assistance and consultation to both licensing staff and child development services; and (3) a local mechanism, e.g., an area council, or a child development board, with legal authority (and hence "clout") to develop supplementary guidelines giving the needed flexibility and individual community flavor. Such a local group should be small (no more than 8 to 12 members), should provide for periodic rotation of membership (since all special interests and groups cannot be represented at once), and should be required to meet regularly to review all child development services in terms of practical issues such as need, duplication, gaps, cost variation, age coverage, and other similar problems. Updating and review of guidelines would naturally follow from these activities.

With this three-level approach, all interests would conceivably have a voice in what is to happen to our children, our major national resource which has been so ruthlessly squandered in these past years.

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Selected Bibliography relating to The Community Regulation of Child Day Care*

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I. Books and monographs - including materials formally published as separate documents and available from their publishers.

II. Papers and articles - including articles appearing in professional journals and periodicals, a few articles from encyclopaedias and yearbooks, and papers presented at various conferences and professional workshops.

III. Reports - including the reported findings of government agencies, professional organizations, universities, and others who have investigated child day care programs and their regulation.

IV. Task Force materials - including papers specially prepared and presented to the Task Force and its Issue Committees by the Task Force consultants and available from the individual consultants or through the Office of Educational Liaison, 915 Capitol Mall, Room 235, Sacramento, CA 95814.

V. State legislation - including recent California laws concerning the provision of various types of child day care services and their regulation.

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* Compiled by Margaret L. Thorpe for the California Child Day Care Licensing Task Force, October 1974.

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*All documents are available directly from their authors or through the Office of Educational Liaison, 915 Capitol Mall, Room 235, Sacramento, CA 95814.

PART V - STATE LEGISLATION

AB99/72, Chapter 670. "Moretti-Lewis-Brown-Rodda, Child Development Act of 1972".

AB1244/73, Chapter 1191. (Redefines services; provides for audit, new fee schedule, and pilot study.) Moretti.

AB2262/73, Chapter 1203. "California Community Care Facilities Act", Lanterman.

Standards for Foster Home Care of Children, Extracts from: Welfare and Institutions Code, Health and Safety Code, California Administrative Code, December 15, 1972, 13 pp. (Received from Sonoma County Department of Social Services as the State is no longer publishing the excerpts from licensing standards).

Title V, Division 19. "Children's Centers and Development Centers". California Administrative Code, 29 pp.

Title XXII, Chapter 4. "Minimum Standards for Facilities for Children". California Administrative Code, 32 pp.

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